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HAZARDOUS WASTE DISPOSAL - A LEGISLATIVE REVIEW

HAZARDOUS WASTE DISPOSAL - A LEGISLATIVE REVIEW

by

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for the

Waste Management Branch
Environmental Protection Service
Environment Canada

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INTRODUCTION

The improper management of hazardous waste materials poses, in most developed nations, a potential threat to the health and safety of individuals and the environment. Canada is no exception. It has been estimated that a minimum of one million tonnes of industrial wastes are generated annually in this country. The problems generated deserve immediate attention.

The legislative review which follows is a ready reference for persons who, when faced with situations of possible hazardous waste contamination, must quickly determine the nature and extent of their recourse under existing statutes and regulations. All important elements of current Canadian legislation, both federal and provincial, which specifically prohibit the disposal or emission of hazardous and toxic waste into water or air, or onto land, have been identified. Legislation which, by judicial interpretation, might prohibit the same is also included. The sections chosen represent a selective view - most must be regarded in their widest sense if they are to apply to the indexed scenarios set out in the eleven tables included below.

A disproportinately small number of judicial decisions has meant that the great majority of the statutory and regulatory sections cited herein remain untested. Summaries of relevant caselaw, the interpretations given therein to key legislative provisions and their application, whether real or conjectury, have, however, been included as general comments for the federal and each of the provincial jurisdictions.

1 CONSTITUTIONAL CONSIDERATIONS

In Canada, all primary governmental powers are divided between federal and provincial administration, with secondary authority often delegated to other levels. This basic division of powers, as set out in the British North America (BNA) Act of 1867, was accomplished at a time when environmental management was not recognized as a distinct category of constitutional jurisdiction. It does, however, now represent a broad field that necessarily gives both levels of government some degree of legislative competence.

The sources of federal constitutional jurisdiction over resource pollution in Canada are numerous. Parliament's power over agriculture under Section 95 of the BNA Act, although held concurrently with the provinces (with the provision that provincial legislation shall have effect only if not repugnant to any federal law), could justify legislation relating to both pollution by agricultural operations (including the utilization of fertilizers and pesticides) and pollution from other sources that damage the quality of agricultural produce. Federal jurisdiction over seacoast and inland fisheries (S. 91(12)) grants Parliament power over the direct regulation and protection of the fishery. Most streams, rivers and lakes support some form of fish life, and because protection of this resource usually requires the maintenance of a high standard of water quality, Section 91 (12) supports extensive federal jurisdiction in the field of water quality management. Section 91(10) gives the federal government power over navigation and shipping. The navigation power extends to any navigable fresh- or saltwater body, while the power over shipping can be used to justify legislation aimed at controlling air and water pollution that might result from such shipping (since this matter seems to be reasonably ancillary to control over shipping itself and since it relates so directly to the manner of construction and operation of ships). The treaty power (S. 132) gives Parliament and the Government of Canada all that is necessary to perform obligations arising under treaties between the British Empire and foreign countries.[1] It does not, however, apply to treaties that Canada entered into after having achieved sovereignty. The result of this situation is that legislation implementing Canadian treaties must be passed by whichever level of government has legislative jurisdiction over the subject matter of the treaty. In some instances this will mean that each province must pass implementing legislation. Federal ownership of national parks and other property allows Parliament to exercise complete

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1. For example: The Boundary Waters Treaty; the Migratory Birds Convention.

pollution control in such areas. The trade and commerce clause (S. 91(2)) allows the federal government to closely regulate international and interprovincial trade - an important point when dealing with the transportation of hazardous wastes. The courts have, however, stated that businesses conducted entirely within a province are beyond this federal jurisdiction. Section 92(10)(a) similarly grants to the federal government control over transportation lines (railways and trucking companies for example) which extend beyond the territorial limits of a province, or connect or link any two provinces. The federal government has also become involved in many activities outside its express legislative jurisdiction by employing what has been called its "spending power"; the right to grant or lend money, often with conditions attached, to assist those engaged in activities within the provincial ambit. Research programs and federal efforts to develop resource inventories also find support and can be augmented through the use of Section 91(6) - the power over census and statistics. Although Parliament cannot use the taxing power to invade a field reserved to the provinces, this power can and is often used to regulate those being taxed. This approach has been used by Parliament to encourage industry to reduce pollution by allowing accelerated depreciation of pollution control equipment, for example.[2]

The criminal law power reserved to the federal parliament under Section 91(27) has been judicially restricted to matters "essentially criminal" in nature, matters which threaten "public peace, order, security, health (and) morality".[3] It includes the power to make new crimes, and to enact legislation for the prevention of crime. Generally, it is for Parliament and not the courts to judge what conduct should be prohibited. Legislation enacted under this head may have an incidental effect on property and civil rights within the provinces so long as the legislation is genuinely enacted in relation to the criminal law. It seems clear, therefore, that the criminal law power could be relied upon to support legislation aimed at preventing pollution of all kinds, including

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2. See: Gibson, D., "Constitutional Jurisdiction Over Environmental Management in Canada," 23 University of Toronto Law Journal 54, pp. 80-81, (1973);
Ince, J., Environmental Law: A Study of Legislation Affecting the Environment of British Columbia pp. 20-22, (1976);
Franson, R. and Lucas, A., Canadian Environmental Law Vol. I, Environmental Law Commentaries, Digests of Cases pp. 258-260, 262-265, (1980);
MacNeil, J., Environmental Management p. 10, (1971).

3. See: Margarine Ref. (1959). SCR I, in Ince. p. 21.

the pollution of air and water by hazardous wastes, since this is directly related to the removal of national health hazards or pollution threatening the safety of Canadians.[4]

The final category of federal legislative competence is the peace, order, and good government clause which precedes the specific enumeration of Parliament's powers in Section 91. This provision allocates to parliament the residue of legislative powers not given specifically to either the provincial legislatures or the federal parliament. It has been held to be capable of supporting federal legislation where the subject matter has attained "national dimensions" or become a matter of "national concern", and if granted gives the federal government the power to handle an emergency sitaution. Because pollution crosses Canadian, international and provincial boundaries, a strong case can be made to the effect that it represents a national or international problem which the federal government is constitutionally capable of handling. Constitutional authority was for example found to control the transportation of dangerous goods not merely as an undertaking of interprovincial nature, but also as a matter of public safety under the peace, order and good government clause. This broader constituional basis then permitted Transport Canada to place statutory responsibilities on the shipper and manufacturer of dangerous goods, not simply on the carrier. The Environmental Contaminants Act is similarly justified on this basis to control manufacturers of toxic substances. The information available respecting the seriousness of the hazardous waste problem in Canada should therefore permit it to fall well within the parameters of this clause.[5]

The basis of provincial legislative jurisdiction in Canada is contained in Section 92 of the BNA Act, which endows the provincial legislatures with very wide powers to deal with enviornmental issues. Environmental management basically falls within five areas of control - the management of public lands belonging to the province (S. 92(5)); control over municipal institutions (S. 92(8)); local works and undertakings (S. 92(10)); property and civil rights in the province (S. 92(13)); and generally all matters

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4. Franson, pp. 255-256; Ince, p. 21; see also: Criminal Code ss. 174 (depositing "an offensive volatile substance"), 176 (nuisance), 202-204 (criminal negligence), 228 (intentionally causing bodily harm), 229 (administering a noxious thing) 245(2) (common assault causing bodily harm), 386 (wilfully causing an event to occur), 387 ("mischief" as a criminal offence), 646-648 (corporate fines) and 745 (sureties, bonds).

5. Gibson, pp. 83-84; Castrilli, J., "Hazardous Waste Law In Canada And Ontario: At the Skull and Crossroads", 9 Canadian Environmental Law Reports 152, p. 160, (1980).

of a merely local or private nature (S. 92(16)). The provincial governments also have almost the same ability to use tax and financial measures in air and water quality management strategies as does the federal government, with the major exceptions applying to polluting sources external to the province. The courts have interpreted these powers broadly. Indeed the only limitations to the latter areas would seem to be the restricting of jurisdiction to matters within provincial boundaries, the possibility that provincial legislation might become inoperative because of paramount federal legislation in the field, and the prohibition against applying provincial legislation to federal Crown property or activities. Because of the federal power over interprovincial trade and commerce, it may be particularly difficult for the provinces to control trading in environmentally harmful products.[6]

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6. MacNeil, p. 181: Ince, p. 23; Franson, p. 273.

2 THE EPA EXPERIENCE - AN OVERVIEW

Although a strong case can be made to support broad federal action, it must be recognized that for many reasons it is quite unlikely that there will ever be, at that level in Canada, comprehensive legislation or regulations specific to the management of hazardous wastes. Environment Canada's operating policy is premised on the assumption that the jurisdiction for hazardous waste management is to be primarily a provincial prerogative. The Departmental mandate is therefore limited in its operation to: i) the international and interprovincial movement of hazardous wastes under the authority of the Transportation of Dangerous Goods Act (by ministerial agreement with the Department of Transport); ii) certain types of spills which create a subsequent hazardous waste problem under the authority of the Fisheries Act and the Transportation of Dangerous Goods act; and iii) the dumping of wastes into the oceans under the authority of the Ocean Dumping Control Act.

If a comprehensive nationwide legislative scheme is ever to be promulgated in Canada, be it through an umbrella statute at the federal level or through a province by province consolidation of acts and regulations (the new Waste Management Act in British Columbia is perhaps the best example of the latter), a number of important prerequisites will have to be met. While consistency between management programs is an obvious consideration, the unique concerns of each province must also be reflected in any nationally coordinated program. The usefulness of a model federal act would in this regard be twofold serving as a guide to provinces who lack appropriate legislative requirements for the transportation, storage and ultimate disposal of hazardous wastes, while at the same time providing a minimum standard towards which all provincial programs should preferably aim if not exceed.

The requirement of "substantial equivalency" in the hazardous waste program of the United States does, by way of comparison, go beyond the latter by ensuring that existing state schemes are at least upgraded to a uniform federal level, are consistent with neighbouring state and other programs and are being adequately enforced. The granting of interim authorization allows a state to operate and upgrade its scheme for two years, after which it must promulgate the relevant federal regulations. Within two years of promulgation the state must then apply for and secure full authorization. If an approved program is later determined to be inadequate, program authority can be withdrawn and the federal equivalent reinstated. Where a state scheme has not been

approved, the Environmental Protection Agency (EPA) serves as the primary enforcing authority and can, even subsequent to approval and through its regional adminstrators, move directly to pursue legal and economic sanctions against a violator upon a state's failure to bring suit or upon prior notice to the state of the agency's intended action.[7]

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7. Goldfarb, W., "The Hazards of Our Hazardous Waste Policy", in Strom, F., ed., 11 Land Use and Enviornment Law Review 93, pp. 97-98, (1980).

3 COMMON LAW INADEQUACIES

To appreciate fully the potential worth of these and other (see below) innovative statutory requirements, one need only look to the serious inadequacies encountered in establishing a common law cause of action under traditional bases of liability. Assuming for instance that a release of hazardous waste into the environment was unintentional, a plaintiff's common law claim must be based on an allegation of either negligence or strict liability. In a negligence action where corporate conduct is claimed to have fallen below the standard of care established by law for the protection of others against an unreasonable risk of harm, liability will attach if the act was the proximate cause of injury, there is a demonstrable absence of intervening causes and the consequences were clearly forseeable[8]. The defendent might claim that when the wastes were disposed of, perhaps many years prior to litigation, the risks were unknown and the disposal practices used conformed to all existing government and industry standards. Under this stae-of-the-art rationale, reasonable care was exercised in light of the known risk. Subsequent findings that the disposal technique could result in harm are immaterial. The defendent is liable only if he continues disposal after the time the risk of harm should have been recognized.[9]

The alternative doctrine of strict liability has been limited to pollution caused by "abnormally dangerous" or "ultrahazardous" activities that are uncommon and that involve a risk of serious harm, notwithstanding that utmost care was taken by the producer to prevent the harm or that there was a demonstrable lack of either intent or negligence in any aspect of the conduct or management of the activity.[10] It is at best

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8. Arbuckle, J., et al., Environmental Law Handbook p. 22, (1978).

9. Meyer, S., "Compensating Hazardous Waste Victims: RCRA Insurance Regulations And A Not So 'Super' fund Act," 11(3) Environmental Law 689, pp. 713-714, (1981).

10. Baurer, T., "Love Canal: Common Law Approaches To A Modern Tragedy", 11 Environmental Law 133, p. 138, (1980); Rea, R., "Hazardous Waste Pollution: The Need For A Different Statutory Approach", 12(2) Environmental Law 443, p. 466, (1982); The classic case of ultrahazardous activity is the use of explosives where there is liability for damages to adjacent property and for injuries to nearby persons even if the user maintained the highest degree of care. See: Shanoff, B., "Superfund will mean more lawsuits against waste generators, handlers", 24(2) Solid Waste Management 84, p. 159, (1981).

unclear whether hazardous waste disposal activites fall within these parameters, although society's recent "coming of age" regarding hazardous wastes might justify requiring waste handlers to assume a heavy legal responsibility for their current practices.[11]

If a waste release results in substantial and unreasonable interference with the use and enjoyment of another's land, including water rights, it is a private nuisance.[12] Injunctive relief is, however, frequently denied when courts decide that the equities weigh in the defendent's favour. The utility of the defendent's conduct is compared with the gravity and probability of harm. This ad hoc balancing of competing yet unquantifiable interests becomes an exercise in judicial subjectivity, and economic factors weigh heavily in the equation. An injured party will generally receive inadequate compensaton when an injunction is denied, while the polluter may gain a prescriptive right to continue the nuisance.[13] Pulic nuisance, on the other hand, may aid in recovery for long-term harm where the pollution is clearly prohibited by law and sufficiently widespread so as to interfere with a right common to all members of the public.[14]

Where a plaintiff owns property adjacent to a disposal site, or utilizes area groundwater, he might claim trespass based on the unauthorized entry from leakage of hazardous wastes. Proof of intent or negligence is not necessary. A person is liable even if he acted in good faith and with reasonable care. But there must have been a direct physical invasion of the plaintiff's land, and the courts have generally held that this invasion occurs only when the object is big enough to be seen with the naked eye. If the defendent causes a personal injury only, or if there is no property right involved, the waste release is actionable only under simple negligence or strict liability.[15]

Even in cases where there is unquestionable proof of economic loss, personal injury or property damage, private actions for compensation frequently fail. A primary reason is the tendency for long periods of time to elapse between the act of improper

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11. Shanoff, p. 159.

12. Meyer, p. 172.

13. Rea, pp. 463-464.

14. Milhollin, G., "Long-Term Liability For Environmental Harm", in Strom, F., ed., 11 Land Use and Environment Law Review 105, p. 112, (1980).

15. Arbuckle, p. 20; McPheeters, B., "Inactive or Abandoned Hazardous Waste Disposal Sites: Coping With A Costly Past", 53(6) Southern California Law Review 1709, p. 1719, (1981); Meyer, pp. 712-713; Rea, pp. 464-465.

disposal and the legal action. The physical processes that give rise to hazardous waste related injuries are such that medical and environmental harm often do not manifest themselves until many decades of latency have passed. In addition, the plaintiff must preserve the action before the statute of limitations–which generally begins to run when the injury occurs rather than when it is discovered-expires.[16]

Whether the plaintiff is pursuing a cause of action under negligence, nuisance, trespass or strict liability, he must prove causation. The lack of scientific certainty regarding the effects of hazardous waste on health and the environment and the time lag between waste release and damage makes this an exremely difficult task. The utilization of experts and the studies which must be obtained to establish their opinion can involve prohibitive costs, and most plaintiffs do not have the funds for, or access to, the scientific data and expertise needed to prove their case.[17] In order to establish causation, the harm causing chemical must be isolated, the pathway from site to victim traced, and medical proof shown that the chemical caused the injury or disease. This difficulty is exacerbated by other factors such as the possibility of natural processes in the soil affecting its composition, the spread of leachate, the presence of more than one disposal site which may have caused the damage, mixture of chemicals at the disposal site[18] and subsequent exposure of the plaintiff to other hazards which may have added to his injury. Perhaps

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16. Meyer, p. 713; Milhollin, p. 115.

17. Fleming, J., "Environmental Litigation: An Analysis of Basic Strategies, Procedures, Substantive Rights And Their Effects", in Strom, F., ed., 10 Land Use and Environment Law Review 133, p. 165, (1979).

18. Allocation of damages where several companies have contributed waste to a single dump site may prove to be very difficult if it is impossible to trace groundwater contamination to any individual company's waste. One American court solved this problem by allowing the injured party to recover his damages from any or all of the companies that contributed to the totality of the risk that created the injury. In another case, a plaintiff who could not show who among several defendent companies was responsible for an injury was allowed to recover from them in proportion to the companies relative market shares. Neither of these cases, however, involved hazardous wastes. See Shanoff, p. 160.

the most difficult element of causation in a personal injury action is proving that a certain chemical toxin of the type leaking from a dump caused a certain disease.[19]

Additional obstacles to effective relief for long-term harm may also exist in hazardous waste actions. There are for instance problems associated with the finding of a responsible, solvent defendent and the collecting of damages awarded in a final judgement. Corporations are generally not liable for harm caused after their dissolution, reorganization or by their subsidiaries. When the harm occurs or is discovered many years after the defendant's act, the use of these corporate forms may well bar recovery. If the disposer's assets are transferred to another legal entity, its liabilities are generally not passed along. But the new corporation will be held liable if the court finds a de facto merger or continuation.[20] A person who creates a dangerous condition on land, whether he be owner or leasee, is ordinarily not liable for harm caused by that condition after he deeds full and clear title to a third party purchaser or surrenders possession; liability is generally deemed to follow ownership. The transfer of property interest in the disposal site will probably shield the responsible defendant from any obligation to perform long-term maintenance of conditions that it has created on the land (such as landfills and tailing ponds) so as to keep them safe.[21] Litigation may thus fail to reallocate and internalize the costs of compensation and cleanup if responsible parties either cannot be identified or are effectively insulated from liability.

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19. Meyer, p. 714; When dealing with chemicals that pose a cancer risk, the concentrations above which drinking water is considered to be contaminated are for example typically levels at which the risk of getting cancer is very low. Thus, it may be impossible for plantiffs to prove that particular cases of cancer among users of the water supply are attributable to any particular chemical contamination. In effect, the plaintiffs would have the virtually impossible burden of ruling out all other factors that could have produced the cancer. See Shanoff, pp. 159-160.

20. Meyer, p. 697

21. Milhollin, pp. 113-115.

4 LEGAL AND FINANCIAL RESPONSIBILITY

i) Surety devices

The use of surety devices, such as performance bonds and escrows, represents one response to the inadequacies of the common law. It is an alternative which places a minimal financial and administrative burden on both industry and government. Surety bonds provide that the bonding company will pay the government if the corporate principal fails to carry out a responsibility and the government is unable to force the company itself to pay for the damages. The company has the right to recover from the principal (who will normally defend) any amount it pays out. Bonds, although less expensive than insurance, represent only an assurance of an ability to pay a judgement, and do not alleviate a plaintiff's other burdens under the common law. The plaintiff must still prove liability. Personal injury coverage requires that the bond amount be set at a high rate and for a long period of time, so it is rather unlikely that banks or sureties would presently be willing to commit themselves to provide such coverage.[22]

The escrow device also operates very simply. When an enforcing department becomes concerned that a firm is not taking steps required for compliance with local legislation, it requires the source to post cash, government bonds or other acceptable security with an escrow agent-typically a bank. For a small fee the bank will either hold the security until such time as the source complies and the agent is so notified, or deliver all or part of this security to the government in the event that the source fails to meet future deadlines as agreed. Although this response has some economic bite, its chief impact is to force the delinquent firm to sit up and take notice that unless it moves promptly to come into compliance, it will be subject to an administratively imposed economic civil assessment (charged month by month for the benefits that it is accruing through delay) large enough to make noncompliance economically unattractive.[23]

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22. Helsing, L., "Insurance: New Approach to Long-term Care", 12(8) Waste Age 78 (1981), p.78; Milhollin, pp. 116-117.

23. This new economic approach can greatly strengthen regulatory law enforcement. It has worked well in the state of Connecticut, cutting noncompliance rates and delay in both large and small cases. Penalties can be imposed quickly since they depend on the act of disposal and not on often slow to develop injury to persons or property. The use of administrative civil penalties affords regulators an opportunity to break away from the many problems intrinsic to retrospective cost reallocation through litigation. See Drayton, W., "Economic Law Enforcement", in Strom F., ed., 11 Land Use and Environment Law review 51, pp. 63-64, 81-82, (1980).

ii) The insurance option

Some pollution coverage for "sudden or accidental" discharges, dispersals, releases or escapes has been offered by insurance companies since 1978.[24] The industry's response to requests for nonsudden and gradual pollution insurance has, however, been a cautious one. Their concern is that there is no guarantee that at the time a claim arises the insured producer will be in existence and carrying adequate coverage.[25] Such a requirement would place a heavy burden on the operator to maintain premium payments even though a site is closed and no longer producing revenues. The burden is increased by the fact that waste companies do not know what these future premiums will cost during the life of the site, and because they are unable to pass that expense on to their customers.[26] But there are at least three American insurance firms that have begun to accept applications for the threat posed by nonsudden and gradual pollution. All three write the coverage on the basis of an engineering survey. The basis for calculating premiums is sales. The programs include modifiers designed to account for the different risks associated with a specific industrial facility or class of facilities. The ultimate premium will reflect, in large measure, how well the applicant manages and monitors waste production or controls waste disposal. Underwriters may be in a position to grant certain modifications in calculating the premium if the applicant demonstrates an efficient operation in those areas. All claims, to be accepted, must be made during the policy period. Provision is made for an insured to purchase a discovery period after termination of a contract. For example, twelve additional months of coverage, should the insurance company cancel or refuse to renew, would entail a charge of 25% additional premium. If the insured cancels or refuses to renew, it can purchase up to twenty-four months additional coverage at a cost of 25% additional premium for the first twelve months and 60% additional premium for the full twenty-four month discovery period. This

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24. The standard Comprehensive General Liability coverage contains a provision "... omitting from coverage bodily injury or property damage arising out of the discharge, dispersal, release or escape of smoke, vapours, soot, fumes, acids, alkalines, toxic chemicals, liquids, gases, waste materials, irritants, contaminants, or pollutants into or upon the land, atmosphere or watercourse, unless the discharge, dispersal, release or escape is sudden or accidental." See Meyer, pp. 706-707.

25. Mahoney, W., "Commercial Insurance And The RCRA Challenge," 11(2) Waste Age 46, p. 46, (1980); Milhollin, p. 119.

26. Meyer, p. 702.

extension of coverage granted under the discovery provision only applies to pollution conditions existing as of the date of expiratic or cancellation of the policy.[27]

An insurance program entirely underwritten by provincial governments represents a second possibility, with companies paying premiums determined according to degree of risk and past performance. The government would administer all claims and payments. This device could be adopted to protect against long-term harm if legislaters would accept the risk. Premiums accumulated over long periods could provide ample funds for claims and eventually decrease the government's obligation. The legislatures, however, would be shouldering a risk which the great majority of private insurers refuse to assume, and there would be a strong temptation to limit liability to a fixed amount.[28]

iii) Liability funds

As a result of considerations such as those cited above it has become apparent in recent years that minimum financial quarantees and a legally binding attribution of liability, legislated through the liability fund mechanism, offer one means of assuring the safe production, storage, transportation and disposal of hazardous waste. Although no such mechanism exists at the present time in Canada, many schemes are currently operating at both the state and federal level throughout the United States.

Contributions to such a fund might be determined in a number of ways:

(a) A per ton fee[29] - in the case of generators, graduated on the amount of hazardous waste produced with smaller, high risk yet low solvency enterprises which produce varying types of dangerous waste consolidated for the limited purpose of spreading the premium burden.[30] In the case of waste disposal facility owners, for each ton of

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27. Mahoney, p. 48.

28. An analogous experiment in the United States relating to insurance for nuclear power saw Congress reluctant to accept the full risk (most of it long-term). The government was, under the Price-Anderson Act, forced to arrange for a consortium and agree to provide protection above the consortium's limit. See Milhollin, pp. 118-120.

29. Each owner or operator of a licensed site for the land disposal of hazardous waste in the state of Wisconsin shall, for example, periodically pay to the Department of Natural Resources a fee of fifteen cents for each ton of waste received and disposed of. See Wisconsin Stat. Ann. 144.442 to 144.442 (West Supp. 1979).

30. Milhollin, pp. 127-128.

waste received and disposed of during the life of the site or for each unit of waste that will remain at the site ofter closure.[31]

(b) An excise tax levied on each manufacturer or generator of hazardous waste who produces or imports (thereby not penalizing domestic producers) inorganic chemicals, petrochemical feedstocks or crude oil - the "building blocks and

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31. A Post-closure Liability Fund, created in the United states as part of the Comprehensive Environmental Response Compensation and Liability Act of 1980 (the "Superfund" legislation), assumes liability for facilities which have received a permit ensuring compliance with environmentally protective hazardous waste standards, which have closed in accordance with all regulations for closure under RCRA (the Resource Conservation and Recovery Act of 1976) and which have monitored themselves for at least five years after closure to demonstrate that there is no substantial likelihood of risk to public health or welfare. Since the EPA is only now beginning to permit such operations, no sites presently fall within this category. This prepaid perpetual fund will shift responsibility for long-term maintenance and monitoring from the private generator to the federal government, which then assumes responsibility for damages and cleanup costs due to waste release after closure. This includes any liabilities an owner or operator has at common law, property damage and any cleanup expenses in excess of the amount in the facilities trust fund. See: Meyer,pp. 702-703; "Superfund's Perpetual Care Provisions", 72(1) Waste Age 20, p. 21, (1981).

As a form of mandatory insurance, the post-closure fund plays an important role in requiring waste disposal facilities to pay fees during the life of the site so that money to pay claims (a fund of 200 million dollars) will be availalbe when the site is closed. Where private insurance coverage qualifies as comparable to the public protection thus offered, any disposal facility using that private insurance option could be excluded from the fund and its liability transfer conditons. See: "Superfund's Perpetual Care Provisions", p. 21. The fund will be financed by taxing (beginning in 1983) the disposal facilities for each unit of waste - $2.13 per dry weight ton received that will remain at the site after closure. By taxing only the waste that will remain, an incentive will hopefully be created to develop alternatives to burial, such as recycling or incineration. See: Meyer, pp. 703-704.

percursors of hazardous substances and hazardous wastes."[32] Such a tax could be varied according to business size so that smaller companies can maintain their position in the market.[33]

(c) A tax equal to a percentage of net profits of generators or facility owners.

(d) A tax or fee assessed according to the degree of risk presented by an individual waste facility, graduated according to the type of waste received. Safe disposers might be reclassified among risk categories and assessed a reduced amount. To provide industry with a further incentive to ensure a higher standard of care, sites deemed to be "low risk" after closure might receive a proportionate rebate of their contributions to the fund.[34]

Because most principal hazardous waste generators are highly solvent industries, a sizable fund seems both fair and necessary. A maximum level should be set, and legislation can provide that when the upper limit is reached collections will cease until

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32. The Hazardous Substance Response Trust Fund (also established under the "Superfund" legislation) will be financed largely (87.5%) by industry through such taxes. See: "Superfund's Perpetual Care Provisions", p. 30. The remaining 12.5% is to be funded through general revenues. It has an authorized ceiling of 1.6 billion dollars by year 1985, and will finance emergency response action and natural resource damage claims when a financially viable defendant is unavailable. See Meyer, p. 699; Rea, p. 460. The Fund also provides for the cleanup of operating or currently inactive disposal sites (with a liability limit of 50 million dollars) and will pay for response costs, remedial action and damage to natural resources caused by hazardous waste releases (defined as any "spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment") from vessels, factories, trains, trucks and storage tanks. Fund representatives can sue the responsible parties for reinbursement under a strict liability theory (See: Meyer, p. 699, Rea, p. 460; "Superfund's Perpetual Care Provisions", p. 30), and joint and several liability will apply to the extent provided by the common law. There is no liability, however, against a defendant who can establish by a preponderance of evidence that the release was caused solely by an act of God, an act of war or act of a third party not contractually related to the defendant. The main shortcoming of the legislation is the conspicuous absence of any victim's compensation provision. The only third party compensation that it will pay is to the federal or state governments that own or operate affected and damaged natural resources. See: McPheeters, p. 1736; Meyer, p. 701; Shanoff, p. 84.

33. Meyer, p. 705; Milhollin, pp. 126-127.

34. Meyer, p. 705; Milhollin, pp. 126-127; Some incentive must be provided if the extensive policing of firms to prevent them from concealing wastes through improper disposal in order to reduce their fees is to be avoided. See: McPheeters, p. 601.

claims or other fund expenses reduce the amount to some smaller size, at which point collections would again resume.[35] If costs exceed the upper limit, government revenues must make up the difference. Each affected province, in the Canadian context, should also be required in such an instance to pay a percentage of the abatement costs incurred within its borders.

Fund representatives must then be able to sue the responsible parties for reinbursement under a strict liability theory. Possible defendants would include owners and operators of hazardous waste storage, treatment or disposal facilities, transporters (or any party to a contract to transport, store, treat or dispose of hazardous waste) and generators.

The creation of a statutory federal toxic contaminant tort, one based upon strict, joint and several liability, would simplify that task while also providing victims with an option to sue the responsible party directly for out-of-pocket medical expenses, property damage and loss of material resources as an alternative to filing a claim against the fund.[36] Strict liability would ensure that costs are allocated to the corporate entities at fault. The burden would be dispersed throughout the economy as part of the increased price of the goods. Vicarious liability would provide a means of extending liability throughout the hazardous waste cycle, imposing liability on all generators, transporters and disposers responsible for every phase of waste disposal.[37]

The establishment of such a fund to compensate victims of hazardous waste releases would be instrumental in helping injured parties overcome the obstacles encountered in pursuing a traditional tort action.[38]

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35. Milhollin, pp. 127-128; The perpetual liability fund established by Wisconsin legislation sets upper and lower limits of fifteen and twelve million dollars respectively.

36. Meyer, pp. 699, 716.

37. Rea, pp. 448-449.

38. In the United States compensation for personal injuries is presently available to toxic waste victims under state law only. Adequate recovery is uncertain at best, and the magnitude of the problem has been well illustrated in actions related to Love Canal litigation, with personal injury claims in excess of two billion dollars now pending in various courts. It is estimated that forty-five million will, by comparison, be necessary to restore the natural environment. See: Rea, pp. 447-448.

(a) A toxic victims compensation board might for instance be established to administer the fund, determine the size of recoverable awards, schedule compensable disease categories, etc. Hearing examiners could be paid from fund monies, with claimants thus able to avoid the expense of litigation.

(b) Efforts could be made to gather baseline data on environmental quality in the vicinity of a proposed activity; data which might later prove crucial in calculating damages or proving causation if the vicinity is later contaminated.

(c) A portion of the fund's assets might be used to hire investigative experts to monitor hazardous waste disposal sites. Once the necessary data on conditions or accidents caused by the activity in question has accumulated, the holders of small claims would be spared the burden of presenting scientific evidence in court.

(d) The fund could be made to outlive any individual or corporate defendant, paying those entitled to relief regardless of whether the harm was caused by a corporation or subsidiary which had since dissolved, or by a condition on land which had been transferred through ownership after the condition was created.[39]

(e) A waste generator's liability for costs stemming from its activities might be made coextensive with the hazardous life of the wastes and the time reasonably necessary to discover the injuries caused thereby.

(f) Flexibility in settling compensation limits would be necessary - levels changing as the need to ensure an adequate balance of funds and compensation paid varies.

(g) When injury to a group takes the form of a relatively small increase in the incidence of disease among members of the group, and the individual victims of the hazardous waste cannot be distinguished, perhaps the best approach is a system whereby a fund administrator could reinburse claimants for the fraction of their compensation costs that correspond to the estimated probability that those costs were caused by the hazardous wastes.

(h) The payment of any claim should be followed by court action against the polluter to reimburse the fund.[40]

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39. McPheeters, p. 1743; Milhollin, pp. 128-129.

40. In Wisconsin, when expenditures made for the costs of repairing a site and the environmental damage that follows would not have been necessary had the person responsible for the operation or long-term care of the site substantially complied with the regulations of the plan of operation, a right of action in favour of the fund accrues to the state against such person, and the Attorney General is to take such action as is appropriate to enforce this right by recovering any amounts so expended.

(i) Such litigation would be an even more effective deterrent if subrogated claims could be consolidated to gain the cost advantages of a class action.[41]

(j) Rules of causation favourable to victims should be applied and claims paid directly to anyone who can show the requisite nexus between his injury and the toxic pollutant alleged to have caused the harm. For example, allocation of the burden of proof between the parties should be altered so that upon introduction of evidence sufficient to enable the trier of fact to find that the plaintiff was exposed to a hazardous substance, that the defendant caused or contributed to the exposure and that there is a "reasonable likelihood" that the exposure contributed to the relevant personal on environmental injury, a presumption that the defendant caused that injury would be established. The burden of producing evidence would then shift to the defendant to rebut the prima facie showing or to provide an affirmative defense.[42]

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41. "Allocating The Costs of Hazardous Waste Disposal", in 94 Harvard Law Review 584, pp. 589, 598, 600, (1981); McPheeters, p. 1743.

42. Six states (Connecticut, Indiana, Illinois, Michigan, Minnesota and South Dakota) have incorporated similar burden of proof sections into their environmental protection statutes. See: Alessi, D., et al., "Shifting The Burden Of Proof In State Environmental Protection Acts: A Blessing To Environmental Plaintiffs", in Strom, F., ed., 10 Land Use and Environment Law Review 165, p. 165, (1979).

Canada

General

Caselaw : Fisheries Act, ss. 30, 33(1)(2).

R. V. Westcoast Reduction Ltd. (S. 33(2))
Unreported, Vancouver City Ct., No. CC 509/73, Feb. 21, 1971.

The Court concluded that oils and greases were in the water within the meaning of the Act whether they float on the surface or not, and that notwithstanding the fact that certain tests carried out by fisheries personnel were not strictly in accordance with textbook procedure, "the inescapable conclusion is that the substance was deleterious to fish".

R. V. Churchill Copper Corp. Ltd. (S. 33(1))
(1971) 4 W.W.R. 481, 5 C.C.C. (2d) 319 (B.C. Prov. Ct.)

The accused was charged as a result of the overflow of effluent from a mine tailing's settling pond. It was held that this is a strict liability offence. The Court rejected the argument that pollution of a remote river was less serious than a river near an urban centre.

R. V. McTaggart (S.30)
(1972) 3 W.W.R. 30, 6 C.C.C. (2d) 258 (B.C. Co. Ct.)

Section 30 creates an absolute prohibition for which mens rea (criminal intent) need not be proven.

R. V. Stearns-Roger Engineering Co. Ltd. (S. 33(2))
(1973) 2 W.W.R. 669, 10 C.C.C. (2d) 374 (BC); rev'd (1974) 3 W.W.R. 285, 12 C.C.C. (2d) 260, 37 D.L.R. (3d) 753 (CA).

The essential quality of a deleterious substance was found by the Court of Appeal tc be that it is harmful to fish or to the use of fish by man. The definition of the word "fish" in this section does not therefore include fish eggs.

R. V. MacMillan Bloedel Industries Ltd. (S. 33(2))
(1973), 13 C.C.C. (2d) 459, 41 D.L.R. (3d) 247 (BC).

Silt was deposited as a result of the gravel-washing operations of the accused's employees. Expert testimony established that the substance was harmful to fish, fry and eggs. The company claimed that the employees had acted without its knowledge and that they had exercised all due diligence to prevent commission of the offence. The defence was rejected because the employees had been improperly instructed by the company and no effort had been made in advance to ascertain possible consequences. Nor was any attempt made to check for such consequences during the course of the operation.

R. V. Jordan River Mines Ltd. (S. 33(2))
(1974) 4 W.W.R. 337 (BC.)

The accused mining company's pipeline for carrying tailings (found to be a deleterious substance) from its mining operation to an offshore outfall suffered breaks on two successive days, causing mine wastes to be deposited in a nearby river. The Court held that what was involved was an offence of strict liability for which mens rea was not a necessary ingredient. Also, a finding that waters are frequented by fish does not require proof that an abundance of commercially exploitable fish are present; the presence of some fish life is enough.

R. V. Jack Cewe Ltd. (S. 33)(2))
(1975), 23 C.C.C. (2d) 237 (B.C. Co. Ct.)

Silt was found to be a deleterious substance in that it forms part of the process of degradation of the quality of the water so that it is rendered deleterious to fish. There was however reasonable doubt that the accused had "permitted" the deposit of such deleterious substance.

R. V. Canada Tungsten Corp. Ltd. (S. 33(2))
Unreported, NWTSC, March 5, 1976.

Fuel oil (a deleterious substance) escaped from a corroded pipe and seeped into a river frequented by fish. The company's argument (as per section 33(8)) that it did not "consent" to such deposit was rejected. Because the "due diligence" shown by the company was not directed at prevention but rather at correcting the existing leak and reducing the damage by containing the spill, it was found that the actions went towards

alleviation of the penalty and not to the issue of liability. Mens rea was confirmed as a not essential ingredient of the offence. The Court also commented on the deterrence value of penalties, noting that they should be large enough to discourage persons from risking detection. The company's remedial efforts were taken into account.

R. V. Great Canadian Oil Sands Ltd. (S. 33(2))
(1978), 9 A.R. 86

The charge was based on four samples:

i) one was taken from pipes that drained the dike which contained the company's tailing pond (which held the by-products of the company's synthetic crude oil refining process).

ii) a second was taken at the "interface" where liquid effluent from the upper part of the dike was discharged directly into the Athabasca River, and

iii/iv) samples were also taken from the river upstream and downstream from the interface sample point.

Rainbow trout and brook stickle-back were introduced under laboratory conditions into the effluent samples for specific periods of time. Some fish mortality was observed in the dike drainage and interface samples, but not in the upstream and downstream samples. The Court held that there was no evidence of visible adverse effects on the river or of disruption of the aquatic or biological systems present therein.

There was in the opinion of the Court no evidence that any harmful substance was discharged from the tailings pond. Because no analysis of the sample fluids was proven in evidence, there was no evidence that the substances were toxic to fish, either themselves or in combination with other substances. Since the dike drainage sample was not proven to have reached the river, it was not "deposited" in the river within the meaning of section 33(2).

While the interface samples did reach the river, they were not shown to be "deleterious". The river was inhospitable to the fish species used in the bioassay since they were either absent or rare in those waters. There was no evidence indicating the pathology of the dead fish used in the tests in order to establish that death was caused by exposure to the effluent samples.

Since no tests were carried out to determine the effect of the effluent on aquatic life common to the Athabasca River there was no evidence that species that

"frequented" the river were deleteriously affected. It was concluded that the bioassays were "merely one isolated circumstantial evidentiary fact", and that in this case significant weight could not be attached to them. Reference was also made to "the facilities of conducting bioassays in laboratory conditions without regard to on-site circumstances."

R. V. Canadian Forest Products (S. 33(2))
(1978), 7 C.E.L.R. 113 (B.C. Prov. Ct.)

Pollution control legislation is concerned not only with the immediate danger of a pollutant but also with its cumulative effects. Hence the Crown need only show that a substance has been deposited that is "deleterious" to fish. It is not required to prove the concentration at which such substance would be harmful.

The Court also rejected the company's defense of due diligence. The oil lines feeding the defendant's heating boilers were suspended from brackets nearby a sewerage line leading directly to an outfall discharging sewer wastes into waters frequented by fish. The Court held that it should have forseen that vibrations might ultimately cause a rupture in the line, allowing oil to escape through the sewerage system.

R. V. Western Forest Industries Ltd. (S. 33(2))
(1978), 9 C.E.L.R. 57 (B.C. Prov. Ct.)

The offence is one of strict liability. Upon proof of the prohibited act the accused may avoid liability by proving that he took all reasonable care.

R. V. Gulf of Georgia Towing Co. Ltd. (S. 33(2))
(1979) 3 W.W.R. 84 (B.C.C.A.)

The accused was charged when a shore tank into which oil was being unloaded from a fuel barge overflowed when a valve at the base of the tank was left open. The company argued that it had exercised due diligence because it was very careful in its hiring and training practices and took care to ensure that employees (such as the pump operator on the barge) met all relevant regulatory requirements.

The Court disagreed. In view of the serious consequences of a spill in these circumstances, greater precautions must be taken. The length to which an employer must go will depend on the circumstances, including the magnitude of the damage that will result in the event of a mistake, and the likelihood of a mistake. The following statement was adopted from R. V. Corporation of the City of Sault Ste-Marie (1978), 3 C.R. (3d) 30,

85 D.L.R. (3d) 161, "where an employer is charged in respect of an act committed by an employee in the course of employment, the question will be whether the act took place without the accused's direction or approval, thus negating willful involvement of the accused, and whether the accused exercised all reasonable care by establishing a proper system to prevent commission of the offence and by taking reasonable steps to ensure the effective operation of the system".

R. V. Byron Creek Collieries Ltd. (S. 33(2))
(1979), 8 C.E.L.R. 31 (B.C. Co. Ct.)

Heavy rains caused erosion of a mountain side, including part of the mine's dump site. Considerable evidence was found to show that the rainfall was unusual and could not have been forseen. Consequently the defence of act of God was available to the accused.

It was also noted that for this type of strict liability offence it is a defence for the accused to show on a balance of probabilities that it used all reasonable care in the circumstances.

R. V. MacMillan Bloedel (Alberni) Ltd. (S. 33(2))
(1979) 4 W.W.R. 654 (B.C.C.A.)

To restrict the definition of "water frequented by fish" to the few cubic yards into which oil spills while being unloaded would be to adopt an unreasonably narrow view. Such an interpretation would "disregard the fact that both water and fish move". The Crown is only required to prove that water in the area of the spill be frequented by fish and that the substance was harmful to any species of fish in the water. It is the substance that is defined as deleterious; once it has been deposited "the offense is complete without ascertaining whether the water itself was thereby rendered deleterious".

R. V. Forest Protection Ltd. (S. 33(2))
(1979), 25 N.B.R. (2d) 513 (N.B.C.A.)

The Crown or a servant of the Crown is bound by and liable for prosecution under the Fisheries Act by virtue of section 71.

R. V. Cyanamid Canada Inc. (S. 33(2))
(1981), 11 C.E.L.R. 31 (Ont. Prov. Ct.)

The accused company discharges effluent containing ammonia from its chemical plant in Niagara Falls into the Welland River. The company is required, under a control order issued under Ontario's Environmental Protection Act, to reduce by 1984 discharges of ammonia and other substances into the river. The present effluent killed a number of rainbow trout within one minute in a bioassay test. Although federal and provincial authorities refused to commence prosecutions, on a private prosecution for a breach of section 33(2) the company was found guilty.

The Fisheries Act applies to bodies of water such as the Welland River which are not fished commercially. The defence of due diligence, which is available to an accused in a charge under the Act, could not be made out in this case. Although the company was in compliance with the control order, and was doing all that a reasonable corporation would do, due diligence to prevent an offence in 1984 is not a defence to the offence alleged to have been committed in 1981. The company was therefore found guilty, but in view of the mitigating circumstances was fined only one dollar.

: Canada Shipping Act, S. 752.

R. V. Canada Steam Ship Lines Ltd (S. 752)
(1960), 127 C.C.C. 205 (Ont. Co. Ct.)

A municipal by-law prohibited pollution of the air. A ship subject to the federal law on navigation and shipping would not be subject to the by-law.

: Oil Pollution Prevention Regulations, S.S. 5,7(a)

R. V. The "Aran" (S.5)
(1972) 9 C.C.C. (2d) 179 (B.C.C.A.)

The offence is one of strict liability. All the Crown need prove is that there was a discharge of oil from the ship and that a person, identifiable or not, on board the vessel caused the discharge. It is not necessary to show the particular conduct or emission that caused the discharge. See also S. 757, Canada Shipping Act.

R. V. Caird (S. 7(a))

(1973), 16 Cr.L.Q. 112 (B.C. Co. Ct.)

The ship in question discharged oil into the water. The Court held that there was strict liability upon the Master of a ship in the form of a mandatory duty to report. See also S. 753(1)(a), Canada Shipping Act.

The "Dilkara" v. The Queen

(1974) 1 W.W.R. 258 (B.C.C.A.)

The accused was convicted for discharging oil contrary to section 752 of the Canada Shipping Act. The incident occured during fuelling when an electric alarm device failed to operate. Although a latent defect, the persons on board the ship were actively in control of the refuelling operation. The court held the offence to be one of absolute liability.

The "Westfalia" V. The Queen

(1974) 3 W.W.R. 186 (B.C.); aff'd. 54 D.L.R. (3d) 412 (C.A.)

Section 755 of the Canada Shipping Act creates a charge (respecting contravention of certain regulations) for which both the ship and the person in control can be charged.

R V. The Vessel "City Guildford" (S. 5)

(1975), 27 C.C.C. (2d) 212 (Ont. Co. Ct.)

The accused ship, being the only "reasonably possible" source of an oil slick found in its vicinity (the oil was the same as that found in its bilge and there were no other vessels in the area) was on appeal convicted with discharging a pollutant into Toronto Harbour. The offence was, again, held to be one of strict liability. The Court, referring to the number of ships using Canadian waters on a regular basis and the need to create an awareness of the dangers, imposed a fine of $2000.00. See also S. 752, Canada Shipping Act.

R. V. The "Gulf Aladdin" (S. 5)

(1975), 27 C.C.C. (2d) 562 (B.C. Co. Ct.); (1977) 2 W.W.R. 677 (B.C.C.A.); (1978) 2 W.W.R. 472 (BC. Co. Ct.)

A tanker barge incapable of propelling itself is a "ship" within the meaning of the Act and does not cease to be so when at rest (it was tied to a wharf when the violation was alleged to have occured). See also S. 752, Canada Shipping Act.

R. V. The "M.V. Allunga" (S. 5)

(1977) 3 W.W.R. 673 (B.C.C.A.)

A latent defect (the failure of a coupling in a ballast line) resulted in an oil discharge which could not have been prevented through the exercise of reasonable care. The Court convicted the accused nevertheless, finding (as per R. V. The "Aran" and R. V. The "Dilkara") that the offence was one of absolute liability and that there is no onus on the Crown to establish the specific act or neglect which caused the discharge into the waters. Taking all reasonable precautions is only a defence under the particular circumstances set out in section 6(1)(b) of the regulations. While the result is to place a heavy onus on the ship, the development of better equipment and procedure might then follow. Avoiding oil spills is "a problem for the ship". See also S. 752, Canada Shipping Act.

The Vessel "Gulf Hathi" V. The Queen (S. 5)

Unreported, B.C.S.C., Vancouver Registry CC790853 (June 13, 1980).

When one of the compartments of the accused ship (a tanker barge) was being topped up a valve failed to seat properly and oil escaped into the waters of Burrard Inlet. The defence of due diligence was held to be not available, the spillage of oil constituting an absolute liability offence that has nothing to do with causation, but only with the fact that the offence has been committed.

: Pest Control Products Act, S. 3(1)

R. V. Forest Protection Ltd. (S. 3(1))

(1979), 25 N.B.R. (2d) 513 (N.B.C.A.)

The Crown or a servant of the Crown is not liable for prosecution under this Act since the Act does not specifically bind the Crown.

Canada	Legislation		Year*	Sections
	APR -	Air Pollution Regulations (CSA-Canada Shipping Act)	1964	SS.5,6
	AWPPA -	Arctic Waters Pollution Prevention Act	1970	S.4
	CWA -	Canada Water Act	1970	S.8
	CAA -	Clean Air Act	1970	S.9
	FA -	Fisheries Act	1970	SS.24,30, 31,33
	IBWTA -	International Boundary Waters Treaty Act	1970	Art. IV
	NWPA -	Navigable Waters Protection Act	1970	SS.19,20
	NIWA -	Northern Inland Waters Act	1970	S.6
	PCPA -	Pest Control Products Act	1970	S.3
	GPPR -	Garbage Pollution Prevention Regulations (CSA)		S.4
	OPPR -	Oil Pollution Prevention Regulations (CSA)	1971	SS.5,6
	PSR -	Pollutant Substances Regulations (CSA)	1973	SS.4,5
	ECA -	Environmental Contaminants Act	1974	S.8
	ODCA -	Ocean Dumping Control Act	1974	SS.4,5,6
	WAR -	Wildlife Area Regulations (CWA - Canada Wildlife Act)	1978	S.3
	TGDA -	Transportation of Dangerous Goods Act	1980	SS.4,5

* Dates throughout are those of origin. Account has been taken of most recent amendments.

DISCHARGES/EMISSIONS	CANADA								
	APR	AWPPA	CWA	CAA	FA	IBWTA	NWPA	NIWA	PCPA
INTO: WATER OR ANY WATERCOURSE		S.4	S.8		SS.24,30 31,33	ART.1 v	SS.19,20	S.6	
: WELLS			S.8		S.33			S.6	
: SEWAGE SYSTEMS			S.8		S.33			S.6	
: THE ATMOSPHERE	SS.5,6			S.9					
ONTO: ROADWAYS			S.8		S.33			S.6	
INTO/FROM: A BUILDING, PLANT FACILITY			S.8	S.9	SS.24,30 31,33	ART.IV	SS.19,20	S.6	S.3
A MINE, QUARRY, PIT, WASTE DISPOSAL OR LANDFILL SITE			S.8	S.9	SS.24,30 31,33	ART.IV	SS.19,20	S.6	S.3
STORAGE TANKS, CONTAINERS			S.8	S.9	SS.30,31 33	ART.IV	SS.19,20	S.6	S.3
ONTO/FROM: PRIVATE PROPERTY			S.8	S.9	SS.24,30 31,33	ART.IV	SS.19,20	S.6	S.3

* HAZARDOUS/TOXIC WASTE OR MATERIAL GIVEN SPECIFIC MENTION

DISCHARGES/EMISSIONS	CANADA (CONTINUED)						
	GPPR	OPPR	PSR	ECA	ODCA	WAR	TGDA
INTO: WATER OR ANY WATERCOURSE	S.4	SS.5,6	SS.4,5	S.8	SS.4,5,6	S.3	
: WELLS				S.8			
: SEWAGE SYSTEMS				S.8			
: THE ATMOSPHERE				S.8			
ONTO: ROADWAYS				S.8		S.3	SS.4,5
INTO/FROM: A BUILDING, PLANT' FACILITY				S.8			SS.4,5
MINE, QUARRY, PIT, WASTE DISPOSAL OR LANDFILL SITE				S.8			SS.4,5
STORAGE TANKS, CONTAINERS				S.8			SS.4,5
INTO/FROM: PRIVATE PROPERTY				S.8			SS.4,5

Canada

Air Pollution Regulations

S.5(1) - No person shall operate or permit the operation of any fuel-burning installation on a ship so that smoke is emitted in greater density than the maximum density authorized by this section.

S.6(1) - Section 5 does not apply to any ship while

(a) new fires are being lit;

(b) fires are being cleaned or soot is being blown and the ship is not under way;

(c) the ship is being laid up;

(d) a breakdown has affected the combustion equipment; or

(e) it is necessary, because of navigational difficulties, to force the combustion equipment to the detriment of its efficient operation,

if all practicable precautions are taken to minimize the emission of smoke.

(2) - No person shall permit soot to be blown while a ship is within one thousand yards of land if

(a) it would have been practicable to carry out that operation before approaching land;

(b) it would be practicable to delay that operation until after leaving land; or

(c) an alternative method of removing soot could be employed.

Arctic Waters Pollution Prevention Act

S.4(1) - Except as authorized by regulations made under this section, no person or ship shall deposit or permit the deposit of waste of any type in the arctic waters or in any place on the mainland or islands of the Canadian arctic under any conditions where such waste or any other waste that results from the deposit of such waste may enter the arctic waters.

(2) - Subsection (1) does not apply to the deposit of waste in waters that form part of a water quality management area designated pursuant to the Canada Water Act if the waste so deposited is of a type and quantity and is deposited under conditions authorized by regulations made by the Governor in Council under paragraph 16(2)(a) of that Act with respect to that water quality management area.

Canada Water Act

S.8 - Except in quantities and under conditions prescribed with respect to waste disposal in the water quality management area in question, including the payment of any effluent discharge fee prescribed therefor, no person shall deposit or permit the deposit of waste of any type in any waters comprising a water quality management area designated pursuant to section 9 or 11, or in any place under any conditions where such waste or any other waste that results from the deposit of such waste may enter any such waters.

Clean Air Act

S.9 (1) - No operator of

(a) any stationary source of a class in respect of which a national emission standard has been prescribed pursuant to section 7, or

(b) a federal work, undertaking or business in respect of which a specific emission standard has been prescribed pursuant to section 13 on the basis of a recommendation by the Minister pursuant to section 12,

shall operate such stationary source or federal work, undertaking or business, as the case may be, in a manner that results in an emission into the ambient air in contravention of that national emission standard or specific emission standard.

(2) - No operator of a work, undertaking or business in respect of which a specific emission standard has been prescribed

(a) pursuant to section 13 on the basis of a recommendation by the Minister pursuant to section 11, or

(b) pursuant to section 21

shall operate such work, undertaking or business in a manner that results in an emission into the ambient air in contravention of that emission standard in circumstances where the concentration of the air contaminant or combination of air contaminants to which the standards relates in the ambient air in the geographical area in which the work, undertaking or business is situated exceeds the maximum tolerable limit with respect to that air contaminant or combination of air contaminants.

Fisheries Act

S.24(1) - One-third of the width of any river or stream, and not less than two-thirds of the width of the main channel at low tide, in every tidal stream shall be always left open, and no kind of net or other fishing apparatus, logs, or any material of any kind shall be used or placed therein.

S.30 - No person shall destroy fish by any means other than fishing except as authorized by the Minister or under regulations made by the Governor in Council under this Act.

S.31(1) - No person shall carry on any work or undertaking that results in the harmful alteration, disruption or destruction of fish habitat

(2) - No person contravenes subsection (1) by causing the alteration, disruption or destruction of fish habitat by any means or under any conditions authorized by the Minister or under regulations made by the Governor in Council under this Act.

S.33(2) - Subject to subsection (4), no person shall deposit or permit the deposit of a deleterious substance of any type in water frequented by fish or in any place under any conditions where such deleterious substance or any other deleterious substance that results from the deposit of such deleterious substance may enter any such water.

(4) - No person contravenes subsection (2) by depositing or permitting the deposit in any water or place

(a) of a waste or pollutant of a type, in a quantity and under conditions authorized applicable to that water or place made by the Governor in Council under any Act other than this Act; or

(b) of a deleterious substance of a class, in a quantity or concentration and under conditions authorized by or pursuant to regulations applicable to that water or place or to any work or undertaking or class thereof, made by the Governor in Council under subsection (13).

International Boundary Waters Treaty Act

Article IV

- It is further agreed that the waters herein defined as boundary waters and waters flowing across the boundary shall not be polluted on either side to the injury of health or property on the other.

Navigable Waters Protection Act

S.19 - No person shall throw or deposit or cause, suffer or permit to be thrown or deposited any sawdust, edgings, slabs, bark or like rubbish of any description whatever that is liable to interfere with navigation in any water, any part of which is navigable or that flows into any navigable water.

S.20 - No person shall throw or deposit or cause, suffer or permit to be thrown or deposited any stone, gravel, earth, cinders, ashes or other material or rubbish that is liable to sink to the bottom in any water, any part of which is navigable or that flows into any navigable water, where there are not at least twenty fathoms of water at all times, but nothing in this section shall be construed so as to permit the throwing or depositing of any substance in any part of a navigable water where such action is prohibited by or under any other Act.

Northern Inland Waters Act

S.6(1) - Except in accordance with the conditions of a licence or as authorized by the regulations, no person shall deposit or permit the deposit of waste of any type in any waters or in any place under any conditions where such waste or any other waste that results from the deposit of such waste may enter any waters.

(2) - Subsection (1) does not apply to the deposit of waste in waters that form part of a water quality management area designated pursuant to the Canada Water Act if the waste so deposited is of a type and quantity and is deposited under conditions authorized by regulations made by the Governor in Council under paragraph 16(2)(a) of that Act with respect to that water quality management area.

Pest Control Products Act

S.3(1) - No person shall manufacture, store, display, distribute or use any control product under unsafe conditions.

Garbage Pollution Prevention Regulations

S.4(1) - No ship shall discharge garbage into any of the following waters:

(a) Canadian waters south of the sixtieth parallel of north latitude;

(b) Canadian waters north of the sixtieth parallel of north latitude that are not within a shipping safety control zone prescribed pursuant to the Arctic Waters Pollution Prevention Act; and

(c) fishing zones of Canada prescribed pursuant to the Territorial Sea and Fishing Zones Act.

(2) - No person shall discharge or permit the discharge of garbage from a ship into any of the waters described in paragraphs (1)(a) to (c).

Oil Pollution Prevention Regulations

S.5 - Subject to section 6,

(a) no person shall discharge from any ship, and

(b) no ship shall discharge

oil or an oily mixture into any of the waters described in paragraphs 4(a) to (c).

S.6(1) - Section 5 does not apply where oil or an oily mixture is discharged from a ship

(a) for the purpose of saving life or preventing the immediate loss of a ship;

(b) due to damage to or leakage from the ship as a result of stranding, collision or foundering if all reasonable precautions were taken

(i) to avoid the stranding, collision or foundering, and

(ii) to prevent or minimize the discharge or;

(c) through the exhaust of an engine or by leakage from an underwater machinery component where such discharge is minimal, unavoidable and essential to the operation of the engine or component.

(2) - Notwithstanding paragraph (1)(c), section 5 applies where oil or an oily mixture is discharged directly into the water from the crankcase drain of a ship's engine that is manufactured on or after January 1, 1973.

Pollutant Substances Regulations

S.4(1) - Subject to section 5, no ship shall discharge a pollutant listed in Schedule I into any of the following waters:

(a) Canadian waters south of the sixtieth parallel of north latitude;

(b) Canadian waters north of the sixtieth parallel or north latitude that are not within a shipping safety control zone prescribed pursuant to the Arctic Waters Pollution Prevention Act; and

(c) fishing zones of Canada prescribed pursuant to the Territorial Sea and Fishing Zones Act.

(2) - Subject to section 5, no person shall discharge or permit the discharge of a pollutant listed in Schedule I from a ship into any of the waters described in paragraphs (1)(a) to (c).

S.5 - A pollutant listed in Schedule I may be discharged from a ship into any of the waters described in paragraphs 4(1)(a) to (c)

(a) for the purpose of saving life or preventing the immediate loss of the ship; or

(b) when the discharge is due to damage to a leakage from the ship as a result of stranding, collision or foundering and all reasonable precautions have been taken

(i) to avoid the stranding, collision or foundering, and

(ii) to prevent or minimize the discharge.

Environmental Contaminants Act

S.8(1) - No person shall, in the course of a commercial, manufacturing or processing activity, wilfully release, or permit the release, of a substance specified in the schedule or any substance that is a member of a class of substances specified in the schedule into the environment in any geographical area prescribed in respect of that substance or class of substances or, if no geographical area is so prescribed, in Canada,

(a) in a quantity or concentration that exceeds the maximum quantity or concentration prescribed in respect of that substance or class of substances for the purpose of this paragraph; or

(b) under conditions prescribed in respect of such substance or class of substances for the purpose of this paragraph.

Ocean Dumping Control Act

S.4(1) - No person shall dump except in accordance with the terms and conditions of a permit.

S.5(1) - No person shall load on any ship or aircraft in Canada for the purpose of dumping any substance except in accordance with the terms and conditions of a permit.

S.6 - No person shall dispose of any substance at sea by placing it on ice in any area of the sea referred to in paragraphs 2(2)(a) to (e) except in accordance with the terms and conditions or a permit.

Wildlife Area Regulations

S.3(1) - ....no person shall, in any wildlife area,

(m) dump or deposit any rubbish, waste material or substance that would degrade or alter the quality of the environment

unless he does so under and in accordance with a permit issued by the Minister pursuant to section 4.

Transportation of Dangerous Goods Act

S.4 - No person shall handle, offer for transport or transport any dangerous goods unless

(a) all applicable prescribed safety requirements are complied with; and

(b) all containers, packaging and means of transport comply with all applicable prescribed safety standards and display all applicable prescribed safety marks.

S.5 - No person shall

(a) put any prescribed safety mark on any container, packaging or means of transport used or intended for use in handling or transporting dangerous goods, or

(b) sell, offer for sale, deliver or distribute any container, packaging or means of transport used or intended for use in handling or transporting dangerous goods, on which any prescribed safety mark is displayed,

unless the container, packaging or means of transport complies with all applicable prescribed safety standards.

Newfoundland	Legislation		Year	Sections
	PCA -	The Pesticides Control Act	1970	SS.9,10
	DEA -	The Department of the Environment Act	1973	SS.24,25
	WMA -	The Waste Material (Disposal) Act	1973	SS.19,20
	APCR -	Air Pollution Control Regulations (DEA)	1980	SS.6,10,11, 12
	ECR -	Environmental Control (Water and Sewage) Regulations (DEA)	1980	S.4

DISCHARGES/EMISSIONS	NFLD.				
	PCA	DEA	WMA	APCR	ECR
INTO: WATER OR ANY WATERCOURSE	SS.9,10	SS.24,25	S.19		
: WELLS	S.9	SS.24,25	S.19		
: SEWAGE SYSTEMS	S.9	SS.24,25	S.19		S.4*
: THE ATMOSPHERE	S.9		S.19	SS.6,11,12	
ONTO: ROADWAYS	S.9	SS.24,25	S.19		
INTO/FROM: A BUILDING, PLANT, FACILITY	SS.9,10	SS.24,25	S.19	SS.6,11,12	
A MINE, QUARRY, PIT, WASTE DISPOSAL OR LANDFILL SITE	SS.9,10	SS.24,25	S.19,20	SS.6,11,12	
STORAGE TANKS, CONTAINERS	SS.9,10	SS.24,25	S.19		
ONTO/FROM: PRIVATE PROPERTY	SS.9,10	SS.24,25	S.19	SS.6,11,12	

Newfoundland

The Pesticides Control Act

S.9 - A person shall not

(a) dispose of any pesticide or herbicide; or

(b) bury, decontaminate, burn or otherwise dispose of any container that has been used to hold a pesticide or herbicide,

except at a site, or in a manner, as the case may be, that is

(c) prescribed by the regulations; or

(d) in the absence of regulations, recommended by the manufacturer of the pesticide or herbicide.

S.10(1) - A person shall not wash or submerge in any river, brook or other open body of water, any apparatus, equipment or container used in the holding or application of a pesticide or herbicide.

The Department of the Environment Act

S.24 - ...no municipal authority or person shall discharge or deposit any material of any kind into a body of water or on any shore or bank thereof or in any place that may cause pollution or impair the quality of water for any beneficial use.

S.25- The Minister may define and prescribe an area surrounding any source of public water supply ....

... in such defined and prescribed area, no person shall

(a) place, deposit, discharge or allow to remain therein any material of any kind that might impair the quality of the water; or

(b) ...otherwise impair the quality of the water.

The Waste Material (Disposal) Act

S.19(1) - ....no person shall

(a) deposit, pour, pump, empty or otherwise dispose of waste material upon any land (whether or not developed land) or land covered by water or in any building or structure that is not a waste disposal site for which a certificate has been granted unless disposed of in a receptable or container placed or located specifically for the purposes of collection; or

(b) use facilities or equipment for the collection, handling, transportation, storage, processing, utilization and disposal of waste material that is not a part of a waste management system for which a certificate has been granted, and in either case except in accordance with the terms and conditions of such certificate.

S.20- No person, other than a Committee, Council or Franchise Holder.....shall remove waste material from a waste disposal site without the prior consent in writing of the Deputy Minister.

Air Pollution Control Regulations

S.6 - ....no person shall cause air pollution or permit air pollution to be caused.

S.11(1) - No person shall burn or permit to be burned in any combustion process equipment, any fuel, waste or other material except the fuel, waste or other material for the burning or which the equipment is designed.

(2) - No person shall burn or permit to be burned in any combustion process equipment any fuel, waste or other material at a greater rate than the rate for which the equipment is designed.

S.12(1) - No person shall burn or permit to be burned any material in an open fire that will cause or is likely to cause air pollution except with the permission and under the direction of a Division Official.

Environmental Control (Water and Sewage) Regulations

S.4 - ...no person shall discharge sewage or other effluent into a public sewer or a sewer leading to a public sewer containing materials which would obstruct or impede the flow of sewage within the public sewer or impair or interfere with the public sewer or any sewage works pertaining thereto, which materials include without prejudice to the generality of the foregoing oil or by products of oil, flammable, explosive, toxic, poisonous or corrosive liquids, solids or gases, fats, congealing materials and other substances in quantity which interfere with the free flow of the public sewer.

Nova Scotia

General

The permit system found in the province's Environmental Protection Act is comparable to that of New Brunswick (see below). Permits are not required for all industries, however, and few charges have been laid. Although the Act is broad in scope, it is also very general and has failed to clearly delineate responsibilities. It remains doubtful whether existing prohibitions will be extended or legislation specific to hazardous waste enacted in the near future. An Act respecting the Transportation of Dangerous Goods and certain amendments to the Motor Carrier Act did, however, receive royal assent in June of 1982. Draft guidelines for chemical landfills have also been developed. There is no legislation specific to pesticide control.

Caselaw: Water Act. S. 16.

R. V. Aberdeen Paving Ltd. (S. 16)
(1981), 11 C.E.L.R. 25 (S.C.N.S.)

The offence of unlawfully causing or permitting a discharge or deposit of suspended solids into a watercourse that may cause pollution or impair the quality of the water for beneficial use is a strict liability offence, and therefore the defence of reasonable care is available to the accused. The test to be considered is whether the accused established proper procedures to avoid the harm prohibited by the statute, and then whether it exercised all reasonable care to ensure that the procedures were carried out. This was deemed to be a question of fact for the trial judge.

In this case the trial judge found as a fact that the accused corporation, by its officers, had exercised all due diligence to prevent the commission of the offence and that these officers were the directing minds and will of the corporation. Notwithstanding that the accused's employees were derelict in carrying out their duties, the accused was therefore found not guilty of the offence charged.

Nova Scotia	Legislation		Year	Sections
	REG -	Regulations (PNGA - Petroleum and Natural Gas Act)	1967	S.48
	WA -	Water Act	1967	S.16
	EPA -	Environmental Protection Act	1973	SS.23,28
	TDGA -	Transportation of Dangerous Goods Act	1982	S.5

DISCHARGES/EMISSIONS	NOVA SCOTIA			
	REG	WA	EPA	TDGA
INTO: WATER OR ANY WATERCOURSE	S.48	S.16		
: WELLS	S.48	S.16		
: SEWAGE SYSTEMS	S.48	S.16		
: THE ATMOSPHERE				
ONTO: ROADWAYS	S.48	S.16		S.5
INTO/FROM: A BUILDING, PLANT, FACILITY	S.48	S.16	SS.23,28	S.5
A MINE, QUARRY, PIT, WASTE DISPOSAL OR LANDFILL SITE	S.48	S.16	SS.23,28	S.5
STORAGE TANKS, CONTAINERS	S.48	S.16	SS.23,28	S.5
ONTO/FROM: PRIVATE PROPERTY	S.48	S.16	SS.23,28	S.5

Nova Scotia

Regulations (Petroleum and Natural Gas Act)

S.48 - The licensee or lessee shall at all times make such reasonable provisions to the satisfaction of the Minister for the disposal of the earth, rock, waste or refuse that the same shall not be an inconvenience, nuisance or obstruction to any roadway, pass, passage, river, creek, or place or to any private or provincial lands, or conflict with or embarrass the operating of any mines on the said lands, or in any manner whatsoever occasion unnecessary private or public damage, nuisance or inconvenience.

Water Act

S.16 - Unless approved by the Minister, no municipality or person shall discharge or deposit or cause or permit a discharge or deposit of any material of any kind into or in any well, aquifer, lake, river, stream, creek, pond, spring, lagoon, swamp, marsh, wetland, reservoir, or other water or watercourse or on any shore or bank thereof or into or in any place that may cause pollution or impair the quality of the water for beneficial use.

Environmental Protection Act

S.23(1) - No person shall own, occupy, operate or be responsible for the operation of a plant, structure, facility, undertaking or thing that discharges, releases, deposits, drains, emits or threatens or allows the discharge, release, deposit or drainage or emission of waste into the environment or otherwise causes or tends to cause pollution unless he has obtained a permit from the Minister.

(2) - ...no person owning, occupying, operating or responsible for the operation of a plant, structure, facility, undertaking or thing shall remove any material from the environment, the removal of which causes or tends to cause pollution, without a permit from the Minister.

S.28(1) - No person

(a) shall commence the construction of a plant, structure, facility, undertaking or thing that will or is likely to cause pollution;

(b) owning, occupying, operating or responsible for the operation of an existing plant, structure, facility, undertaking or thing shall alter or modify the plant,

structure, facility, undertaking or thing where the alteration or modification will or is likely to result in an emission or discharge of waste into the environment, or otherwise cause or tend to cause pollution,

contrary to this Act or the regulations unless the plans and specifications pertaining to those matters contained in clauses (a) and (b) are approved by the Minister in accordance with Section 23.

Transportation of Dangerous Goods Act

S.5 - No person shall transport any dangerous goods in a vehicle on a highway unless

(a) all applicable prescribed safety requirements are complied with; and

(b) the vehicle and all containers and packaging in it comply with all applicable prescribed safety standards and display all applicable prescribed safety marks.

New Brunswick

General

Much reliance is placed on a flexible permit system which is used on a case by case basis to regulate air and water releases and hazardous waste disposal. This approach is seen as preferable to prosecution through the enforcement of broad statutory prohibitions, and has been quite successful. Little caselaw has therefore developed, although a number of informations have in the past been laid under section 33(2) of the Fisheries Act in regard to pesticides contaminating waters frequented by fish. The pesticides group has also redrafted, upgraded and tightened their regulations. This work should be completed by the end of 1982, and will include a new maximum fine of $50,000 as well as container disposal requirements, label information and transportation restrictions. There have also been recent amendments to the Pesticides Control Act (royal assent being given in June of 1982). New solid waste management regulations are being planned. Existing legislation - particularly the Water Quality Regulation under the Clean Environment Act - is, however, generally regarded as more than adequate to meet present hazardous waste needs.

Although plans for the immediate construction of a waste disposal facility have been set aside, an adequate site would, in all likelihood, be chosen promptly (note that zoning requirements apply to cities only) if future circumstances demand such a response. The chances of siting a regional maritime facility are seen as remote at best. The establishment of a liability fund for abandoned sites is also unlikely - the problem is not regarded as sufficiently widespread to warrant such action. What might be regarded as a priority one site in New Brunswick, for instance, may only be seen as priority two or three elsewhere.

New Brunswick	Legislation		Year	Sections
	PCA -	Pesticides Control Act	1973	SS.19,20,21 24, 24.1
	WQR -	Water Quality Regulation (CEA - Clean Environment Act)	1976	SS.3,23,24
	PCR -	Pesticides Control Regulation (PCA)	1977	SS.12,26
	WWR -	Water Well Regulations (CEA)	1978	SS.20,25
	AQR -	Air Quality Regulations (CEA)	1979	SS.16,20

DISCHARGES/EMISSIONS	N.B. PCA	WQR	PCR	WWR	AQR
INTO: WATER OR ANY WATERCOURSE	SS.19,20,24, 24.1	SS.3,23, 24	SS.12, 26		
: WELLS	SS.20,24, 24.1	SS.3,23	S.12	SS.20,25	
: SEWAGE SYSTEMS	SS.20,24, 24.1	SS.3,23	S.12		
: THE ATMOSPHERE	S.24, 24.1				S.16
ONTO: ROADWAYS	SS.21,24, 24.1	SS.3,23	S.12		
INTO/FROM: A BUILDING, PLANT, FACILITY	SS.19,20,21, 24, 24.1	SS.3,23	SS.12, 26		S.16
A MINE, QUARRY, PIT, WASTE DISPOSAL OR LANDFILL SITE	SS.19,20,21, 24, 24.1	SS.3,23	SS.12, 26	SS.20,25	S.16
STORAGE TANKS, CONTAINERS	SS.19,20,21, 24, 24.1	SS.3,23	SS.12, 26		SS.16, 20
ONTO/FROM: PRIVATE PROPERTY	SS.19,20,21, 24, 24.1	SS.3,23	SS.12, 26		S.16

New Brunswick

Pesticides Control Act

S.19 - No person shall wash or submerge in a body of water, or cause water from a body of water to be drawn into a pesticide container or an apparatus used for the mixing or application of a pesticide in a manner contrary to the regulations.

S.20 - No person shall discharge into a body of water any substance used in

(a) mixing or applying a pesticide; or

(b) washing a pesticide container.

S.21 - No person shall store or transport a pesticide in a manner that may allow the pesticide to come directly or indirectly into contact with human, animal or plant life in a manner that could be injurious to that life.

S.24 - No person shall dispose of a pesticide or a mixture containing a pesticide in a manner contrary to the regulations.

S.24.1 - No person shall dispose of a pesticide container in a manner contrary to the regulations.

Water Quality Regulation

S.3(1) - No person shall, without an approval, emit, discharge, deposit, leave or throw any contaminant into or upon the environment in any location such that it may, directly or indirectly, cause water pollution to any waters of the Province.

(2) - No person shall, without an approval, cause or permit a source to emit, discharge, deposit, leave or throw any contaminant into or upon the environment in any location such that it may, directly or indirectly, cause water pollution to any waters of the Province.

(4) - No person shall, without an approval, construct or modify or permit the construction or modification of a source which is or will be a danger of pollution.

(8) - No person shall construct, modify, or operate, or permit the construction, modification or operation of any source, sewage works or waterwork except in accordance with the terms and conditions of the approval granted for such source, sewage works or waterworks.

(9) - No owner of land shall knowingly permit any construction, modification or operation of any source, sewage works or waterworks on his land which is in contravention of this regulation.

S.23(1) - If waters of the Province are used or will be used for a public water supply, the Minister may define an area surrounding such supply as a protected area.

(3) - In an area defined pursuant to sub-section (1), no person shall

(a) leave, deposit, throw or cause or permit the leaving, depositing or throwing of any materials of any kind whatsoever which might impair the quality of the water;

(b) do anything which might impair the quality of the water;

except with the written consent of the Minister.

S.24 - Unless the Minister consents otherwise in writing, no person shall add a chemical substance to a public water supply except at a water treatment unit.

Pesticides Control Regulation

S.12 - No person shall store, handle, use or apply a pesticide in such a manner that

(a) the pesticide will be likely to contaminate food, feed or drink intended for human or animal consumption;

(b) the pesticide will be likely to impair the health or safety of any person.

S.26(1) - No person shall draw water directly from a body of water into equipment used to perform a pesticide application unless the equipment is equipped with an effective device to prevent backflow.

(2) - No person shall wash or submerge any equipment used to perform a pesticide application in any body of water in such a manner that any pesticide may be directly or indirectly discharged or deposited in that body of water.

Water Well Regulations

S.20(2) - No source of contaminant...shall be constructed any nearer to a well than the distance prescribed (herein)...unless the well is abandoned....

S.25 - No well shall be used for waste disposal without the written approval of the Minister and any such use shall be in accordance with such requirements as are established by the Minister in his approval.

Air Quality Regulations

S.16 - No person shall cause or permit an emission which is of such a nature or extent that it:

(a) causes substantial loss of enjoyment of the normal use of any property;

(b) substantially interferes with the normal conduct of any business; or

(c) causes damage to property.

S.20 - No person shall, for commercial purposes, store, handle or transport any volatile compound in any matter other than one approved by the Minister.

Prince Edward Island	Legislation		Year	Sections
	EPA -	Environmental Protection Act	1975	S.9
	DGTA -	Dangerous Goods Transportation Act	1981	S.3

DISCHARGES/EMISSIONS	P.E.I. EPA	P.E.I. DGTA
INTO: WATER OR ANY WATERCOURSE	S.9	
: WELLS	S.9	
: SEWAGE SYSTEMS	S.9	
: THE ATMOSPHERE	S.9	
ONTO: ROADWAYS	S.9	S.3
INTO/FROM: A BUILDING, PLANT, FACILITY	S.9	
A MINE, QUARRY, PIT, WASTE DISPOSAL OR LANDFILL SITE	S.9	
STORAGE TANKS, CONTAINERS	S.9	S.3
ONTO/FROM: PRIVATE PROPERTY	S.9	

Prince Edward Island

Environmental Protection Act

S.9(1) - Unless approved by the Minister, no person shall discharge or deposit any material of any kind onto land or into the air or into any well, lake, river, pond, stream, spring, reservoir, or other water or watercourse or on any shore or bank thereof, or into any place that may cause pollution or impair the quality of the land, air or water.

Dangerous Goods Transportation Act

S.3 - No person shall handle or transport any dangerous goods in a vehicle on the highway unless,

(a) all applicable prescribed safety requirements are complied with; and

(b) the vehicle and all containers and packaging in it comply with all applicable prescribed safety standards and display all applicable prescribed safety marks.

Quebec

General

Despite much activity there is at present no legislation specific to hazardous waste management (as there is for both liquid and solid waste) in the province of Quebec. A regulation issued under the Environmental Quality Act introducing the manifest system should however appear sometime in the fall of 1982, however, or at least by late 1983 when the Stablex operation in Blainville (a treatment facility for inorganic chemicals) is completed. That complex will help to solve at least part of the most serious and immediate concern -adequate laws and regulations but no proper disposal facilities. All wastes, at the present time, must be stored. For PCB storage $750.00 per gallon is required to be paid to the Department of the Environment; a sum that is returned to the operator as the material is destroyed. A bond is similarly required for all landfills, with the amount paid determined by the estimated costs of removal and cleanup and returned at the end of the surveillance period (note that all old landfill sites will be shut down by 1985; sanitary landfills only are to be permitted). As in the Blainville case, this period after closure is usually set at 25 years. Additional security was assured for the latter in that even though the site and buildings are owned by the company, the landfill area itself is leased from the province which thus retains complete control and can close the site at any time. No property value guarantees or compensation scheme for nearby residents was considered; it being preferable for the facility to prove that it is indeed safe and of value to the community.

Caselaw: Environmental Quality Act, S. 22.

> Procureur - General de la Province de Quebec V. Societe du Parc Industriel du Centre du Quebec (S. 22)
> (1979) 3 A.C.W.S. 502 Q.C.A.

Section 22 is intended to prevent the modification of environmental quality. As long as evidence is presented which shows modification, it is not essential to prove destruction of flora and fauna. Continuation of the work in question till the final judgement could only aggravate conditions, therefore the appeal was allowed and an injunction granted.

Quebec	Legislation	Year	Sections
	EQA - Environmental Quality Act	1972	SS.20,22,32 54,55,65,66 67,68,69
	LWMR - Liquid Waste Management Regulation (EQA)	1975	SS.3,4,7,8
	SWMR - Solid Waste Management Regulation (EQA)	1978	SS.55,134
	RRPM - Regulation Respecting Pulp and Paper Mills (EQA)	1980	SS.30,48,49

QUEBEC

DISCHARGES/EMISSIONS	EQA	LWMR	SWMR	RPPM
INTO: WATER OR ANY WATERCOURSE	SS.20,66, 68*	S.3	S.134	S.30
: WELLS	SS.20,66, 68*	S.3	S.134	S.30
: SEWAGE SYSTEMS	SS.20,66, 68*	S.3	S.134	S.30
: THE ATMOSPHERE	SS.20,68*	S.7		
ONTO: ROADWAYS	SS.20,66, 68*	SS.3,4		SS.30,49
INTO/FROM: A BUILDING, PLANT, FACILITY	SS.20,22, 32,54,55, 66,67*,68*	SS.3,7, 8	S.134	S.30
A MINE, QUARRY, PIT WASTE DISPOSAL OR LAND-FILL SITE	SS.20,22, 54,55,65, 66,67*,68*	SS.3,7	SS.55*, 134	SS.30,48
STORAGE TANKS, CONTAINERS	SS.20,22, 54,55,66, 67*,68*, 69	SS.3,7	S.134	S.30
ONTO/FROM: PRIVATE PROPERTY	SS.20,22, 54,55,66	SS.3,7	S.134	S.30

Quebec

Environment Quality Act

S.20 - No one may emit, deposit, issue or discharge or allow the emission, deposit, issuance or discharge into the environment of a contaminant in a greater quantity or concentration than that provided for by regulation of the Lieutenant-Governor in Council.

The same prohibition applies to the emission, deposit, issuance or discharge of any contaminant the presence of which in the environment is prohibited by regulation of the Lieutenant-Governor in council or is likely to affect the life, health, safety, welfare or comfort of human beings, or to cause damage to or otherwise impair the quality of the soil, vegetation, wildlife or property.

S.22 - No one may erect or alter a structure, undertake to operate an industry, carry on an activity or use an industrial process or increase the production of any goods or services if it seems likely that this will result in an emission, deposit, issuance or discharge of contaminants into the environment or a change in the quality of the environment, unless he obtains from the Director a certificate of authorization.

S.32 - No one may establish waterworks, a water supply intake or water purification appliances or carry out work respecting sewers or the installation of devices for the treatment of waste water before submitting the plans and specifications to the Director and obtaining his authorization.

Such authorization shall also be required for work on reconstruction, extension of old installations and connections between the conduits of a public system and those of a private system.

S.54 - No one may establish or alter a waste management system or part of it without obtaining a certificate from the Director attesting that the project complies with the standards provided by regulation of the Lieutenant-Governor in Council.

S.55 - No person may operate a waste management system or a part of it without obtaining from the Director a permit for that purpose, which is granted on the conditions determined by regulation of the Lieutenant-Governor in Council. It shall be valid for a term of five years and may be renewed.

S.65 - No land used as a site for elimination of waste which is no longer in use may be used for construction purposes for a period of 25 years without the written permission of the Director.

S.66 - No one may deposit waste in a place other than a site for elimination or storage of waste or a waste treatment plant approved by the Director under section 54 or 55, except in the cases provided for by regulation of the Lieutenant-Governor in Council.

S.67 - The Minister may, on the conditions and for the territory he determines, grant to a person or municipality a special permit whose term shall not exceed 25 years, for establishing or operating a site for the elimination, storage or treatment of certain classes of waste of a chemical or radioactive nature defined by regulation of the Lieutenant-Governor in Council.

S.68 - When a special permit has been issued under section 67 in respect of certain classes of waste of a chemical or radioactive nature, no one may sell, transport, deposit, store, eliminate or treat such waste contrary to any regulation of the Lieutenant-Governor in council relating to such matters.

S.69 - No one may use, offer for sale or sell a container or any material used for wrapping, contrary to the standards and conditions prescribed by regulation of the Lieutenant-Governor in Council.

Liquid Waste Management Regulation

S.3 - Except as provided in section 4 and 7, no person shall discharge, deposit or dump directly or indirectly liquid waste into the environment. This prohibition is established within the meaning of section 20 of the Act. Subject to the provisions of the Regulations respecting discharges into sewer networks made under the Act, the same prohibition shall apply to the discharge, deposit or dumping of liquid waste into a sewer network operated by a municipality or person contemplated in....section 32 of the Act.

S.4 - Notwithstanding the provisions of section 3, the spreading of dust control oil on a traffic lane for motor vehicles is authorized between 1 May and 1 November each year for reducing the emission of dust into the atmosphere, on the express condition however that such spreading be required by a municipality, the Crown, a governmental body or the owner or lessee of a land or road, the whole subject to the provisions of....section 20 of the Act. The spreading

of dust control oil on a road covered with stone or earth is also authorized, for the purposes of the Act, where the owner or occupant of a riverine property on such road wishes to prevent the rising of dust but only, in such case, where the latter obtains permission therefor from the person responsible for the road.

S.7 - No person shall incinerate, treat, eliminate or store liquid waste other than in an establishment holding a permit in force or a certificate issued under sections 54, 55 or 67 of the Act.

S.8 - It is prohibited to mix liquid waste with the effluent of a plant.

Solid Waste Management Regulation

S.55 - No person may deposit, or allow to be deposited, any (prohibited) waste....at a sanitary landfill site. The presence of any such waste in the ground is prohibited within the meaning of section 20 of the Act.

S.134 - No one may deposit solid waste in water. The presence of solid waste in surface water is prohibited within the meaning of....section 20 of the Act. Furthermore, no one may tolerate the presence of solid waste in a body of surface water in his charge or care.

Regulations Respecting Pulp and Paper Mills

S.30 - No one may deposit pulp and paper mill waste or allow it to be deposited in the environment....

S.48 - No waste other than pulp and paper mill waste may be deposited in a pulp and paper mill waste landfilling site.

S.49 - Trucks used to transport pulp and paper mill waste must be sealed to prevent waste falling on the ground or on a public highway during transfer. Depositing the waste in that way is prohibited within the meaning of section 20 of the Act.

Ontario

General

One recent proposal in Ontario concerns the possibility of establishing a General Registration Regulation. The average fee would approximate $500.00 per company, with each of the latter being required to know what wastes are being generated and whether or not its site is the proper one for that waste. A related proposal would eliminate the 25 year surveillance clause included in the Environmental Protection Act and ensure that each facility registered in its deed to the land that that site was used for storing or disposing of waste materials, and designated exactly what type and percentage of wastes are in the site so that all prospective buyers can easily ascertain the risk. The feasibility of insurance, of a total compensation package providing immediate access without fault, is also being considered.

The certification process under the Environmental Protection Act has been criticized by some as inefficient. The different requirements for a waste management operation and an individual managing his own waste as a continuation of the manufacturing process can in some situations actually block viable waste management alternatives. For example if one of two factories located near to each other possessed an excess capacity while the other had a small amount of waste which the first was willing to destroy, it would not be permitted to do so. Although a safer means might be unavailable, the parties involved would still have to go through the complete certification process.

One final proposal that is currently circulating concerns itself with the development of a better hazardous waste definition; one that contains specific testing methods and is user oriented. The management of waste in accordance with the expanded use of drinking water criteria and prohibitions represents one possible route. A solution to problems of small quantity disposal (of two gallons of paint for example) is also required.

Caselaw: Air Pollution Control (General) Regulations, S.S. 5(3), 6(b).

Re Union Felt Products (Ont.) Ltd. and The Queen (S. 6(b))

(1975), 8.O.R. (2d) 438 (H.C.J.)

Proceedings under this section are not criminal in nature.

R. V. Glen Leven Properties Ltd. (S. 6(b))
Unreported, Feb. 10, 1977, Ont. Div. Ct.

Because the consequences of the accused's action were reasonably forseeable and it failed in this case to take reasonable measures to prevent the emissions, the company permitted the emission of an air contaminant to such an extent and degree as to cause loss of enjoyment of normal use of property. See also S. 13(1)(c), Environmental Protection Act.

R. V. The Canada Metal Company Ltd. (S 5(3))
(1980), 11 C.E.L.R. 28 (Ont. Co. Ct.)

On an appeal by the Crown from a suspended sentence imposed at trial on the company, which had entered pleas of guilty to two charges of unlawfully causing or permitting the concentration of a contaminant (lead) to exceed the standard prescribed in Schedule 1 of the Regulations, contrary to section 5(3), it was held that the appeal be allowed and the sentence varied to a penalty of $1,500.00 on the first count and $3,500.00 on the second, with costs fixed at $500.00.

The trial judge erred in imposing a suspended sentence. In considering the principle of general deterrence, reference should be made to the wide purpose of the Act; namely, to control various kinds of emissions from other lead smelters in the Toronto area. The trial judge further erred in holding that a fine within the limits imposed by the Act would not act as a specific deterrent to a wealthy corporate accused. The fines provided are not a negligible specific deterrent. Furthermore, the trial judge misconstrued or ignored the agreed statement of facts in holding that a conviction would have been impossible without the cooperation of the offender and that, because the offence is a public welfare offence, the good character of the accused is of less importance than in criminal offences.

: The Ontario Water Resources Act, S. 16(1).

R. V. Matspeck Construction (S. 16(1)).
(1965), 2 O.R. 730 (H.C.J.)

The term "discharge or deposit" does not create duplicity.

R. V. Industrial Tankers Ltd. (S. 16(1)).
(1968) 4 C.C.C. 81 (Ont. Co. Ct.)

The Court held that this section created an absolute prohibition such that the Crown did not have to prove mens rea, but was required to show that the pollutant was put in the water as a result of an act or emission by the accused or one of its employees which the accused had the power and authority to prevent. The company should be fixed with liability notwithstanding that it gave instructions to its employee which would have prevented the spill. The company is responsible for all acts of its servants which are within the scope of their employment.

R. V. City of Barrie (S. 16(1))
(1970), 13 Crim. L.Q. 371 (Ont. Prov. Ct.)

The Act was designed to stop pollution. Without express approval to discharge raw sewage into a watercourse the accused could not rely on a general approval for reconstruction of the sewage works. The trial judge noted that mens rea was not an essential ingredient of the offence.

R. V. Cherokee Disposals and Construction Ltd. (S. 16(1))

(1973) 3 O.R. 599, 13 C.C.C. (2d) 87 (Prov. Ct.)

The accused was charged with depositing a contaminant likely to impair the quality of a body of water. Mens rea was held not to be an essential ingredient of the offence. The Crown need only prove that the deposit had the ability to impair a body of water and might have done so and that the possible impairment was caused by the accused or those under his authority and that the act was one which the accused had the power and authority to prevent but did not. Thus certain "acts of God" - acts of malfeasors not in the employ of the accused; of employees beyond the scope of their employment - might be considered circumstances in which the accused would not be held responsible. In this case the accused could have prevented the impairment by desisting from the activities (a garbage disposal operation) which caused it.

R. V. Sheridan (S. 16(1))
(1973), 2 O.R. 192, 10 C.C.C. (2d) 545 (Dist. Ct.)

The accused was in charge of a mining operation that discharged tailings into a stream. The accused was in full control and responsible for the company, and was found

guilty. There was no onus on the Crown to prove that the stream was unimpaired prior to the discharge. Letters written by the accused containing certain admissions of problems were admitted as evidence against him.

R. V. North Canadian Enterprises (S. 16(1))
(1974), 20 CCC. (2d) (Prov. Ct.)

A dam failed at the accused's mining operation, allowing contaminating tailing water to escape into a stream. The defence of act of God failed since there was insufficient evidence of an extraordinary rainfall. Although formal approval had not yet been given, the accused claimed that the Department had given "tacit" approval through its passivity. Evidence did, however, indicate that the latter had attempted to contact the accused to settle problems relating to the dam and that the accused had failed to respond.

R. V. Liquid Cargo Lines Ltd. (S. 16(1)
(1974), 18 C.C.C. (2d) 428 (Prov. Ct.)

A tank overflowed while filling and resulted in fuel oil entering a river. The offence was held to be one of strict liability, the only defences available to the accused being acts of God, a malfeasor not in the accused's employ or of an employee acting outside the scope of his employment.

R. V. Corporation of the City of Sault Ste. Marie (S. 16(1))
(1978), 21 N.R. 295 (S.C.C.)

The city entered into an agreement with a disposal company for the disposal of all refuse originating in the city. The firm supplied the site upon which it commenced a sanitary landfill operation. The site bordered on a creek and pollution resulted. The company was charged and convicted with a breach of this section. The question before the court was whether the city was also guilty of the same offence.

The Court found that pollution offences such as this are undoubtably public welfare offences, enforced through the criminal law but "in substance of a civil nature", enacted in the interests of the public health. The correct approach in such strict liability offences is that the prosecution carries the burden of proving beyond a reasonable doubt that the accused committed the prohibited act, but is relieved of the burden of proving mens rea. If however, the prosecution establishes an actus reus it is open to the accused, who will usually have special knowledge of the breach, to prove on a balance of probabilities that all due care has been taken.

A reading of the section indicates that an offence would be committed by those "who are in a position to exercise control of this activity and prevent pollution from occuring, but fail to do so". Absence of an initial duty to dispose of garbage would not excuse a municipality from liability once it has chosen to do so. Nor does liability turn solely on the terms of the contract. The test is a factual one, concerned with the particular circumstances of each case. A municipality is a legislative body and it fails to control those it hires at its own peril. The due diligence which must be established is that of the responsible officials of the accused city, not that of its employees, agents or contractors.

: Environmental Protection Act, S.S. 13(1)(c)(e), 41(1).

R. V. Canadian Motor Lamp Co. (S. 13(1)(c))
(1967) 1 O.R. 484, 2 C.C.C. 210 (Prov. Ct.)

A charge under this section requires that the Crown establish mens rea, since the word "permits" implies the ability, authority or power to prevent. Once mens rea is proved the Crown does not have to prove impairment in fact. It is sufficient that the Crown establish that the discharge had the potential of impairing the water.

R. V. Sisters of St. Joseph Diocese of Toronto (S. 13(1)(c))
(1969), 12 Cr. L.Q. 106 (Co. Ct.)

A charge was laid after an officer made observations using a visual smoke chart to assess the density of the smoke in question. The conviction was quashed since the officer had failed to prove that the smoke chart used was the chart referred to in the regulations.

R. V. Peconi (S. 13 (1)(c))
(1970) 3 O.R. 693, Crim. L.Q. 124 (H.C.J.)

The accused operated a rendering plant and was charged with emitting an odour under what is now section 13(1)(c). The Court held that the offence is proved if it is established that there was an odour emitted and it caused discomfort to a person. The odour need not persist over a period of time. The offence is one of strict liability.

R. V. Lake Ontario Cement Ltd.
(1973), 2 O.R. 247, 11 C.C.C. (2d) 1, 35 D.L.R. (3d) 109 (H.C.J.)

The Environmental Protection Act was validly passed under provincial powers of property and civil rights and matters of a local nature. The Court rejected the

argument that pollution was a matter of national concern and came under the federal power of peace, order and good government.

R. V. Fort Motor Co. of Canada
(1973), 12 C.C.C. (2d) 8

It was established that the accused's factory emitted contaminants that caused discomfort to persons. After the date of the offence the Air Pollution Control Act was replaced by the Environmental Protection Act. The accused under certain sections of the latter was subject to an approved program to control emissions and argued that the protection afforded therein should have retroactive effect. The Court rejected this argument and convicted the accused, also on the grounds that the program had not been fully complied with.

R. V. Chinook Chemicals
(1974), 3 O.R. (2d) 768, 17 C.C.C. (2d) 559 (Prov. Ct.)

The Crown may lead similar factual evidence on emissions either prior or subsequent to the date charged providing there is a sufficient connection between the similar facts and the facts in issue to prove either the occurrence of the emission or source. Impossibility of prevention was held not to be a defence.

Re Rockcliffe Park Reality Ltd. and Director of the Ministry of the Environment
(1975), 10 O.R. (2d) 1 (C.A.)

The dumping of clean fill on one's own property was held not to be within the purview of the Act." Natural environment" meant only air, land and water which is part of the public domain.

R. V. Power Tank Lines Ltd.
(1975), 23 C.C.C. (2d) 464 (Ont. Prov. Ct.)

A carrier, in accepting a shipment, accepts responsibility for even purely accidental spills where there is a forseable risk of such a spill.

R. V. Springbank Sand and Gravel
(1976), 25 C.C.C. (2d) 535 (Co. Ct.)

A very strong wind blew sand from the accused's gravel pit onto adjoining land. Since the blowing sand would have occurred even if the operation had been shut down, the accused was not the cause of the pollution.

Re Canadian Pacific Ltd. (S 41 (1))

Environmental Appeal Bd. Toronto, July 22, 1977, reversed (1978), 19 O.R. (2d) 498 (Ont. D.C.)

A collision between a truck and C.P.R. freight train at a level crossing resulted in the derailment of tank cars and a spill of approximately 1000 gallons of askarel transformer liquid containing 70% polychlorinated biphenyls (PCB's) on the right of way. The Court found that the section does not by its terms contemplate that Appeal Board orders (to engage a consultant, in this case) may be issued under the section against the Ministry of the Environment. More specific authority than the provision which states that the Act binds the Crown is required to support such a jurisdiction. In any event C.P. Ltd. and not the Ministry was the "occupant or person having charge and control of the land" under section 41(1).

It was also held that PCBs were not waste within the meaning of that section. The PCBs may have become waste after the spill, but it was not waste prior to the spill. Nor was it "deposited". The term implies intentional placing of material rather than accidental spillage. The appropriate power to deal with this type of situation is that vested in the Minister by section 17 of the Act.

R. V. Toronto Refiners and Smelters Ltd. (S. 13(1)(c)

(1978), 20 O.R. (2d) 772 (Ont. Div. Ct.), reversing (1977), 17 O.R. (2d), 38 (Ont. H.C.)

The accused was charged under section 13(1)(c) after an inspector deliberately walked into a white plume of smoke emitted from the accused's plant. The trial judge dismissed the case on the grounds that the emissions from the plant had not affected anybody except the inspector, the inspector's discomfort was caused by his own deliberate act and any discomfort he felt was momentary and minimal and therefore did not amount to "material" discomfort. On a stated case the High Court of Justice allowed a Crown appeal; however, the Divisional Court dismissed the latter because the included questions were not determinative of the issues before the Court. It also disagreed with the conclusion that the fact that the area in question was a factory area with no houses and that no other persons were seen in the immediate area is irrelevant and provides no defence.

The Director, Ministry of the Environment V. Mississauga
(1979), 9 C.E.L.R. 24

Despite high levels of methane gas escaping from a closed waste disposal site, the Ministry of the Environment could not issue control orders under the Environmental Protection Act imposing new obligations on either current or former owners of a site once the use of the site had ended.

R. V. St. Mary's Cement Ltd. et al. (S. 13(1)(e))
(1978), 11 C.E.L.R. 15

A large cement mixer truck belonging to the accused company was found to be leaking hydraulic fluid while on a private construction site in downtown Toronto. The driver called his dispatcher to advise him of the problem, and shortly thereafter a company mechanic arrived on the scene and attempted to make the necessary repairs. He then requested that the driver take the unit back to the company yard. Problems arose along the way, however, and a fluid slick just over one kilometre in length resulted. A number of vehicles had great difficulty maneouvering through the spill.

The alleged offence apparently is one of strict liability. Trucks operated by the company have two-way radios, serving to some extent as a safeguarding feature. Mechanics employed by the company all have a Class "A" licence, and all have more than twenty years service. Repair parts are purchased new from the manufacturer, and no restrictions are placed regarding the question of time loss or expenses incurred in making repairs. On the site of a mechanical problem, the mechanic is in complete control of the situation. One could only speculate as to what further steps the company might have taken to avoid the charge. To do so might result in impractical solutions and advance the offence to one of absolute liability. The Court thus found that the company used all reasonable diligence to avoid the situation, and was not guilty of the charge. The mechanic took a calculated risk which resulted in the aforementioned situation, and the charge being one of strict liability, was found guilty and fined $500.00.

Ontario	Legislation	Year	Sections
	APCR - Air Pollution Control (General) Regulations (EPA)	1970	SS.6,10,11, 12
	OWRA - The Ontario Water Resources Act	1970	S.19(1)
	PHA - Public Health Act	1970	Schedule B S.4
	EPA - Environmental Protection Act	1971	SS.5, 13,39,40, 45,84
	TLIWR - Transfers of Liquid Industrial Waste Regulation (EPA)	1971	SS.4,5
	CCR - Classes of Contaminants (Exemptions) Regulations (EPA)	1972	S.2
	PA - The Pesticides Act	1973	S.4
	PAR - Pesticides Act (General) Regulations (PA)	1974	SS.23,36,44, 98,105
	LRIA - Lakes and Rivers Improvement Act	1980	S.36,38

DISCHARGES/EMISSIONS	ONTARIO								
	APCR	OWRA	PHA	EPA	TLIWR	CCR	PA	PAR	LRIA
INTO: WATER OR ANY WATERCOURSE		S. 19(1)	SCH.B S.4	SS. 5,13 39,45,84			S.4	SS.23, 36,44, 98	SS.36,38
: WELLS		S. 19(1)	SCH.B S.4	SS.5,13, 39,84			S.4	SS.36,44, 98	
: SEWAGE SYSTEMS		S. 19(1)	SCH.B S.4	SS.5,13, 39,84	S.5		S.4		
: THE ATMOSPHERE	SS.6,10, 11,12			SS.5, 13			S. 4		
ONTO: ROADWAYS		S. 19(1)	SCH.B S.4	SS.5, 13, 39, 84		S.2	S.4	SS.36, 105	
INTO/FROM: A BUILDING, PLANT, FACILITY	SS.6,10, 11,12	S. 19(1)	SCH.B S.4	SS.5, 13, 39,40,84	SS.4,5		S. 4	SS.23, 36,44, 98	SS.36,38
A MINE, QUARRY, PIT, WASTE DISPOSAL OR LANDFILL SITE	SS.6,10,11 12	S. 19(1)	SCH.B S.4	SS.5, 13, 39,40,45,84	SS.4,5		S.4	SS.23,98	SS.36,38
STORAGE TANKS, CONTAINERS	SS.6,12	S. 19(1)	SCH.B S.4	SS.5,13, 39,40,45, 84	SS.4,5		S.4	SS.23,98	SS.36,38
ONTO/FROM: PRIVATE PROPERTY	SS.6,10, 11, 12	S. 19(1)	SCH.B S.4	SS.5,13, 39,40,45			S.4	SS.23,36 44,98	SS.36,38

Ontario

Air Pollution Control (General) Regulations

S.6 - No person shall cause or permit to be caused the emission of any air contaminant to such extent or degree as may,

(a) cause discomfort to persons;

(b) cause loss of enjoyment of normal use of property;

(c) interfere with normal conduct of business; or

(d) cause damage to property.

S.10(1) - No person shall burn or permit to be burned in any fuel burning equipment or incinerator any fuel or waste except the fuel or waste for the burning of which the equipment or incinerator was designed.

(2) - No person shall burn or permit to be burned in any fuel burning equipment or incinerator any fuel or waste at a greater rate than that for which the equipment or incinerator was designed.

S.10a - Except for heat, sound, vibration or radiation, no person shall

(a) construct, alter, demolish, drill, blast, crush or screen anything or cause or permit the construction, alteration, demolition, drilling, blasting, crushing or screening of anything so that a contaminant is carried beyond the limits of the property on which the construction, alteration, demolition, drilling, blasting, crushing or screening is being carried out;

or

(b) sandblast or permit the sandblasting of anything so that a contaminant is emitted into the air,

to an extent or degree greater than that which would result if every step necessary to control the emission of the contaminant were implemented.

S.11 - No person shall operate or permit the operation of:

(a) an appartment incinerator, domestic incinerator, multiple chamber incinerator or starved air incinerator burning domestic waste;

(b) a multiple chamber incinerator or a starved air incinerator burning solid industrial waste; or

(c) an incinerator burning liquid industrial waste, industrial slurries or sludges, sewage sludges or slurries, gaseous waste, organic vapour or fume, which

causes or is likely to cause a concentration in the combustion gases emitted into the natural environment, of organic material having a carbon content, expressed as equivalent methane, greater than 50 parts per million by volume.

S.12 - No person shall store, handle or transport any solid, liquid or gaseous material or substance in such manner that an air contaminant is released to the atmosphere.

The Ontario Water Resources Act

S.19(1) - An area may be defined by a Director that includes a source of public water supply.

(b) wherein no material of any kind that may impair the quality of water therein shall be placed, deposited, discharged or allowed to remain; or

(c) wherein no act shall be done and no water shall be taken that may unduly diminish the amount of water available in such area as a public water supply,

and thereupon the municipality or person who has a right to use the water from such source for the purpose of a public water supply shall give notice of the area so defined by publication, posting or otherwise as the Director considers necessary for the protection of the source of public water supply.

Public Health Act

Schedule B S.4

No person shall within the municipality suffer the accumulation upon his premises, or deposit or permit the deposit upon any land belonging to him of anything that may endanger the public health, or deposit upon, on or into any street, square, land, by-way, wharf, dock, slip, lake, pond, bank, harbour, river, stream, sewer or water, any manure or other refuse, or vegetable or animal matter or other filth.

Environmental Protection Act

S.5(1) - No person shall deposit in, add to, emit or discharge into the natural environment any contaminant, and no person responsible for a source of contaminant shall permit the addition to, emission or discharge into the natural environment of any contaminant from the source of contaminant, in an amount, concentration or level in excess of that prescribed by the regulations.

S.13(1) - ....no person shall deposit, add, emit or discharge a contaminant or cause or permit the deposit, addition, emission or discharge of a contaminant into the natural environment that,

(a) causes or is likely to cause impairment of the quality of the natural environment for any use that can be made of it;

(b) causes or is likely to cause injury or damage to property or to plant or animal life;

(c) causes or is likely to cause harm or material discomfort to any person;

(d) adversely affects or is likely to adversely affect the health of any person;

(e) impairs or is likely to impair the safety of any person; or

(f) renders or is likely to render any property or plant or animal life unfit for use by man.

S.39 - No person shall deposit waste upon, in, into or through any land or land covered by water or in any building that is not a waste disposal site for which a certificate of approval or a provisional certificate of approval has been issued and except in accordance with the terms and conditions of such certificate.

S.40 - No person shall use any facilities or equipment for the storage, handling, treatment, collection, transportation, processing or disposal of waste that is not part of a waste management system for which a certificate of approval or a provisional certificate of approval has been issued and except in accordance with the terms and conditions of such certificate.

S.45 - No use shall be made of land or land covered by water which has been used for the general disposal of waste within a period of 25 years from the years in which such land ceased to be used unless the approval of the Minister for the proposed use has been given.

S.84(1) - No person, employee or agent exercising any authority...or carrying out any duty imposed or order on direction...shall dispose of or use any pollutant, or any matter, thing, plant or animal or any part of the natural environment that is affected or that may reasonably be expected to be affected by the pollutant, except,

(a) in accordance with an order of or direction by the Minister under this or any other Act;

(b) in accordance with a direction by or the approval of the Director, but such a direction or approval shall not be contrary to the regulations; or

(c) in accordance with an approval, order, requirement or direction by the Director under any other Part of this Act or by a Director under any other Act administered by the Minister, but such an approval, order, requirement or direction shall not be contrary to the regulations.

Transfers of Liquid Industrial Waste Regulation

S.4(1) - No operator of a Class I waste management system (those facilities, equipment and operations of a producer of liquid industrial waste that are involved in the collection, handling or storage of liquid industrial waste) shall permit liquid industrial waste to pass from his control except by transfer of the liquid industrial waste to a Class 2 waste management system (those facilities, equipment and operations of a hauler of waste that are involved in transporting liquid industrial waste) for which a certificate of approval or a provisional certificate of approval has been issued.

S.5(1) - No operator of a Class 2 waste management system shall permit liquid industrial waste to pass from his control except by transfer of the liquid industrial waste

(a) to a waste management system or a waste disposal site for which a certificate of approval or a provisional certificate of approval has been issued; or

(b) to a sewage works under the Ontario Water Resources Act for which an approval under that Act has been issued and with the approval of the owner of such sewage works.

Classes of Contaminants (Exemptions) Regulations

S.2 - Where any substance used on a highway by the Crown as represented by the Minister of Transportation and Communications or any road authority or any agent or employee of any of them for the purpose of keeping the highway safe for traffic under conditions of snow or ice or both is a contaminant, it is classified and is exempt from the provisions of the Act and the regulations.

The Pesticides Act

S.4 - No person, whether acting or not acting under the authority of a licence or permit under the Act or an exemption under the regulations, shall deposit, add, emit or discharge or cause or permit the deposit, addition, emission or discharge of a pesticide or of any substance or thing containing a pesticide into the environment that

(a) causes or is likely to cause impairment of the quality of the environment for any use that can be made of it greater than the impairment, if any, for such use that would necessarily result from the proper use of the pesticide;

(b) causes or is likely to cause injury or damage to property or to plant or animal life greater than the injury or damage, if any, that would necessarily result from the proper use of the pesticide;

(c) causes or is likely to cause harm or material discomfort to any person greater than the harm of material discomfort, if any, that would necessarily result from the proper use of the pesticide;

(d) adversely affects or is likely to affect adversely the health of any person to a greater degree than the adverse effect, if any, that would necessarily result from the proper use of the pesticide;

(e) impairs or is likely to impair the safety of any person to a greater degree than the impairment, if any, of the safety of any person that would necessarily result from the proper use of the pesticide; or

(f) renders or is likely to render, directly or indirectly, any property or plant or animal life unfit for use by man to a degree greater than the unfitness, if any, that would necessarily result from the proper use of the pesticide.

Pesticides Act (General) Regulations

S.23 - No person shall wash any equipment used to perform an extermination in any lake, river or other surface water or in such a manner that any pesticide may be directly or indirectly discharged or deposited in any lake, river or other surface water.

S.36 - No person shall use a pesticide containing a cyanide compound for an extermination in any building or vehicle where the pesticide may come in contact with the waters of any stream, lake or water flowing into any stream or lake.

S.44 - No....pesticide containing thallium sulphate, strychnine or zinc phosphide shall be used for an extermination,

(c) in such a manner as to come in contact with or be likely to come in contact with food or drink intended for human or animal consumption.

S.98 - No person shall store any pesticide in such a manner that the pesticide is likely to come into contact with food or drink intended for human or animal consumption.

S.105 - No person shall transport or cause or permit the transportation of a pesticide by a vehicle operated on any highway or road unless the pesticide is secured in a manner sufficient to prevent the escape or discharge of the pesticide from the vehicle.

Lakes and Rivers Improvement Act

S.36(1) - Where any tree, part of a tree, refuse, substance or matter has been thrown or deposited in a lake a river or on the shores or banks thereof in such a manner as, in the opinion of the Minister, impairs the natural beauty of the lake or river, the Minister may order the person who committed or caused the commission of such act to take such steps within the time specified in the order as are necessary to remove the tree, part of a tree, refuse, substance or matter from the lake or river or from the shores or banks thereof.

S.38(1) - No person shall throw, deposit or discharge, or permit the throwing, depositing or discharging of, any refuse, sawdust, chemical, substance or matter from any mill into a lake or river, or on the shores or banks thereof.

Manitoba

General

No legislation specific to hazardous waste is anticipated in Manitoba until a decision is made at the ministerial level as to future priorities - a general hazardous waste management act being but one alternative. Although existing prohibitions are felt to be adequate, a sharpening of administrative tools through new legislation is desired. Piecemeal amendments are being avoided in the short-term. Regulations specific to hazardous waste can for the present be written under the authority of sections 2 and 18 of the Clean Environment Act. The possibility of establishing a liability fund at the provincial level is doubtful and years away at best, although the province will probably choose to construct its own waste disposal facility. There have been no cases on orders under section 5 of the Clean Environment Act in the past year; there have been but two or three in total since its enactment in 1972.

Caselaw: Waste Disposal Grounds Regulation, S.3.

Weibe V. Rural Municipality of De Salaberry (S.3)
(1979) 3 A.C.W.S. 754 M.Q.B.

The plaintiff sought an injunction restraining the municipality from operating a waste disposal ground on adjoining land, and damages for nuisance. The plaintiff had bought the land, unaware of the disposal plans, before the municipality acquired an interest and had built and occupied his home before operations began. The Court held that there had been a real and substantial interference with the use and enjoyment of property.

The plaintiff was entitled to expect that air in a rustic setting would not be contaminated. Despite the use of certain language, including "shall" in section 3, a municipality's discretion as to sites and methods made the Clean Environment Act permissive. A municipality exercising discretion under the latter must consider private rights. In this particular case the municipality failed to discharge the onus of proving that nuisance was the inevitable consequence of its authorized acts. Most of the nuisance could in fact be eliminated through proper operation; the land was well suited to such use. Damages were not the complete remedy; an injunction was granted not to prevent future use, but to restrain the municipality from continuing present operating methods. New methods were specified. No damages could be awarded for depreciation, property value

or future economic loss where an injunction would avoid the problem. Present loss was unproven. But for loss of enjoyment and comfort, an award of $2 500.00 was granted by the Court.

Manitoba	Legislation		Year	Sections
	SR -	Sanitation Regulation (PHA - Public Health Act)	1971	SS.3,12,13 15,16,20,21 35,43,44, 47,49
	CEA -	Clean Environment Act	1972	SS.3,4,5
	WDGR -	Waste Disposal Grounds Regulation (CEA)	1976	SS.11, Schedule A S.7
	LUPR -	Licenses and Use of Pesticides Regulation (PFCA - The Pesticides and Fertilizers Control Act)	1977	S.7
	POSWQ -	Provisional Objectives of Surface Water Quality (CEA)	1979	
	SHGAP -	Storage and Handling of Gasoline and Associated Products (CEA)	1980	SS.8,9,10, 12

DISCHARGES/EMISSIONS	SR	CEA	WDGR	LUPR		SHGAP
INTO: WATER OR ANY WATERCOURSE	SS.3,43,44 47,49	S.5		S.7		SS.8,9,10
: WELLS	SS.3,43 44,47	S.5		S.7		SS.8,9,10
: SEWAGE SYSTEMS	SS.3,44, 47	S.5		S.7		SS.8,9,10
: THE ATMOSPHERE	SS.3,12,13 15,16	S.3	S.11			
ONTO: ROADWAYS	SS.3,44	S.4		S.7		SS.8,9,12
INTO/FROM: A BUILDING, PLANT, FACILITY	SS.3,12,13 15,16,20, 21,44,47,49	SS.3,4,5		S.7		SS.8,9,10
A MINE, QUARRY, PIT; WASTE DISPOSAL OR LANDFILL SITE	SS.3,12,13 15,16,20,21 35,43,44,47, 49	SS.3,4,5	SCH.A. S.7	S.7		SS.8,9,10
STORAGE TANKS, CONTAINERS	SS.3,12,13 15,16,20,21 44,47,49	SS.3,4,5		S.7		SS.8,9,10
INTO/FROM: PRIVATE PROPERTY	SS.3,12,13 15,16,20, 21,44,47,49	SS.3,4, 5		S.7		SS.8,9,10

Manitoba

Sanitation Regulation

S.3 - No person shall create or maintain an insanitary condition, or permit the existence of an insanitary condition, in any place within or under his control or management.

S.12 - ....no person shall cause, suffer or permit smoke, or dust, or cinders, or fly ash, or fumes or gases, or offensive odours to discharge or escape from any building or premises to the detriment or annoyance of others; and the doing of any such act is a nuisance.

S.13 - No owner shall cause, suffer or permit the discharge into the atmosphere of any air contaminant

(a) the density of which is greater than number one, but not greater than number two, on the Ringelmann Smoke Chart for a period or periods totalling more than four minutes in one half hour, or more than eight continuous minutes at anytime; or

(b) during the lighting of new fires in heating equipment, the density of which is greater than number two, but not greater than number three, on the Ringelmann Smoke Chart for a period or periods totalling more than three minutes in one quarter hour, or more than six continuous minutes at any time; or

(c) the density of which is greater than number three on the Ringelmann Smoke Chart at anytime.

S.15 - No owner shall discharge into the atmosphere from any source, an air contaminant having a weight in excess of four-tenths of one grain per cubic foot of atmosphere calculated at a temperature of sixty-eight degrees Fahrenheit and at a pressure of thirty inches of mercury.

S.16 - No owner shall cause, suffer or permit the discharge into the atmosphere of

(a) sulphur compounds (calculated as sulphur dioxide) exceeding in concentration two-tenths of one per cent by volume of the gases present, calculated at a temperature of sixty-eight degrees Fahrenheit, and at a pressure of thirty inches of mercury, and with a carbon dioxide content of twelve per cent; or

(b) solid products of combustion exceeding in concentration four-tenths of a grain per cubic foot of gas calculated at a temperature of sixty-eight degrees

Fahrenheit, and at a pressure of thirty inches of mercury, and with a carbon dioxide content of twelve per cent.

S.20(1) - The owner, occupier or user of any premises shall maintain the premises, including the land, buildings, and appurtenances, in a sanitary and orderly condition; and, without limiting the generality of the foregoing, he shall, to the satisfaction of, and as required by, the medical officer of health, comply with the following requirements:

(a) Household garbage, refuse, and waste shall be stored in suitable containers and in a suitable location.

(b) Ashes, grass clippings, leaves, and any other bulky refuse shall be stored in a sanitary and orderly fashion.

(c) Junk, including bottles, cans, containers, building materials, vehicles or any part thereof, machinery and any other miscellaneous waste material, shall be stored in a sanitary and orderly manner and in a suitable location.

(d) Liquid wastes and slops shall be stored in suitable containers.

(e) Restaurant and food processing wastes shall be stored in suitable containers and handled in a sanitary manner.

(2) - General trade and industrial waste shall be handled and stored in a manner approved by the medical officer of health.

(3) - The things to which references is made in clauses (a) to (e) of subsection (1) and in subsection (2) shall be disposed of in the manner required by the medical officer of health.

S.21 - The owner, the occupier and the user of any property shall prevent the deposit of any waste material from his property, other than that authorized by licence or permit, upon or into other premises or upon or into public property.

S.35 - No waste disposal ground shall be located where, in the opinion of the medical officer of health, it may contribute to an offensive or insanitary condition.

S.43 - No waste disposal ground shall be located where it may cause pollution or any surface or underground source of potable water.

S.44 - No person shall deposit waste elsewhere than on a waste disposal ground provided or arranged by a municipality or local government district, except where the waste is deposited or disposed of

(a) by licence, into bodies of water under the supervision of either the Metropolitan Corporation of greater Winnipeg or the Clean Environment Commission; or

(b) by authority of the Oil and Natural Gas Conservation Board into a salt water disposal well or water injection well, or any other well under the jurisdiction of that board; or

(c) by connection with a municipal or public sewage system or approved private sewage disposal system; or

(d) by disposal in a private waste disposal ground operated in accordance with this regulation.

S.47(1) - No person shall deposit or discharge into, or on to the bank of, any river, stream, lake, creek, spring, coulee, reservoir, pond, or dugout, or on the ice thereof, any manure, excreta, filth or refuse of any nature, or permit the fouling or contamination of ice or water on any such body of water by the congregating or watering of stock at any water hole or place.

(2) - No person shall commit any act that will or may contaminate any underground water supply, by the discharge of any sewage, surface drainage, liquid waste, or filth into any well, abandoned well, hole, or other opening; and no person shall fill or replenish any existing well, except with water from an approved source satisfactory to the medical officer of health.

(3) - Notwithstanding subsection (2), where, in the case of a particular well or group of wells, a person who has been specifically authorized by The Oil and Natural Gas Conservation Board to do so, may

(a) dispose of salt water produced from oil wells in salt water disposal wells;

(b) inject salt water or fresh water into water injection wells;

(c) follow such oil drilling and oil production practices as may be authorized from time to time by The Oil and Natural Gas Conservation Board; and

(d) dispose of all refinery waste in an oil well approved by The Oil and Natural Gas Conservation Board, under such terms and conditions as may be specified by that board;

or do any one or more of the things mentioned in clauses (a) to (d)

(4) - No person shall dam or obstruct the flow of any natural water course by the deposit of manure or other unclean or offensive material.

S.49 - No person, without the written permission of the Minister, shall discharge into any water course any raw or untreated sewage, or any creamery, trade, or mine waste that is of such a nature as will, or may, create any dangerous or offensive condition or nuisance, or impair any waters used for any municipal or private domestic water supply or render them dangerous or unfit for use.

Clean Environment Act

S.3 - No person, either directly or indirectly, shall cause, suffer, or permit the contamination of air in excess of prescribed limits.

S.4 - No person, either directly or indirectly, shall cause, suffer, or permit the contamination of soil in excess of prescribed limits.

S.5 - No person, either directly or indirectly, shall cause, suffer, or permit the contamination of water in excess of prescribed limits.

Waste Disposal Grounds Regulation

S.11 - Open burning in a Class I waste disposal ground (serving a population in excess of 5,000 persons) is prohibited unless otherwise approved.

Schedule A S.7

Liquid wastes shall not be deposited at a Class I waste disposal ground.

Licenses and Use of Pesticides Regulation

S.7 - Disposal of pesticides and pesticide containers shall be carried out in compliance with The Clean Environment Act and The Public Health Act and regulations under those Acts.

Storage and Handling of Gasoline and Associated Products

S.8 - No owner or operator shall directly or indirectly contaminate the soil or water by causing, suffering or permitting leakage of gasoline or associated products from a storage tank system or vehicle.

S.9 - No person shall directly or indirectly contaminate the soil or water by causing, suffering or permitting spillage of gasoline or associated product from a storage tank system or vehicle.

S.10 - No person shall directly or indirectly contaminate any body of water or any underground water supply by causing, suffering or permitting the dumping, depositing, dropping, throwing, discarding or leaving gasoline or associated product.

S.12 - Notwithstanding section 9, the use of associated products is acceptable for

(a) application to road surface by provincial government departments and agencies and municipal corporations within departmental guidelines or regulations; and

(b) application of pesticides; and

(c) other practices as the Minister may deem acceptable from time to time.

Saskatchewan

General

Two legislative items have been recently proposed but received first reading only - a provincial Dangerous Goods Transportation Act and certain alterations (regarding definitions and handling, for example) to the Department of the Environment Act. The province is in the process of implementing a manifest system, and because legislative changes will be required a consultant has been contracted to develop recommendations. The final product will in all likelihood be similar to the federal and Ontario examples. Background work is underway regarding the development of a hazardous waste treatment facility. Possible legislation is also being considered to deal with pesticide can disposal. There are at present no adequate disposal sites for such waste.

Saskatchewan	Legislation		Year	Sections
	WMR -	Waste Management Regulations (PHA - Public Health Act)	1972	SS.9,12,30 37
	WRMA -	Water Resources Management Act	1972	S.27
	LCA -	Litter Control Act	1973	S.3
	PCPA -	The Pest Control Products (Saskatchewan) Act	1973	SS.6,8,9
	APCR -	Air Pollution Control Regulations (APCA - Air Pollution Control Act)	1975	SS.3,14,15, 16,17,18
	PCPR -	The Pest Control Products Regulation (PCPA)	1976	S.9
	UMPCR -	Uranium Mining Pollution Control Regulations (DEA - Department of the Environment Act)	1980	S.27
	ESCR -	Environmental Spill Control Regulations (DEA)	1981	S.9
	MIPPR -	Mineral Industry Pollution Prevention Regulations (MRA - The Mineral Resources Act)	1982	SS.4,9,10, 12,13

DISCHARGES/EMISSIONS	SASKATCHEWAN								
	WMR	WRMA	LCA	PCPA	APCR	PCPR	UMPCR	ESCR	MIPPR
INTO: WATER OR ANY WATERCOURSE		S.27	S.3	SS.6,8,9		S.9		S.9	SS.4,9,10, 12,13
: WELLS		S.27	S.3	SS.6,8		S.9		S.9	SS.4,9,10, 12,13
: SEWAGE SYSTEMS		S.27	S.3	S.8		S.9		S.9	SS.4,9,10, 13
: THE ATMOSPHERE				S.8	SS.3,14 15,16, 17,18	S.9	S.27	S.9	S.4
ONTO: ROADWAYS			S.3	SS.6,8	S.17	S.9		S.9	S.4
INTO/FROM: A BUILDING, PLANT, FACILITY	S.37	S.27	S.3	SS.6,8,9	SS.3,14, 15,16, 17,18	S.9	S.27	S.9	SS.4,9,10, 12,13
A MINE, QUARRY, PIT, WASTE DISPOSAL OR LANDFILL SITE	SS.9,12 30	S.27	S.3	SS.6,8,9	SS.3,14, 15,16, 17,18	S.9	S.27	S.9	SS.4,9,10, 12,13
STORAGE TANKS, CONTAINERS	S.37	S.27	S.3	SS.6,8,9		S.9		S.9	S.4,9,10, 12,13
ONTO/FROM: PRIVATE PROPERTY		S.27		SS.6,8,9	SS.3,14, 15,16, 17,18	S.9		S.9	SS.4,9,10, 12,13

Saskatchewan

Waste Management Regulations

S.9 - A person or municipality shall not hereafter establish a dry disposal site or commence disposing of solid wastes within a waste disposal ground by sanitary landfill without first obtaining a permit to do so from the Minister.

S.12 - A dry disposal site of waste disposal ground shall not be located within 300 feet of a cemetary.

S.30 - Petroleum wastes, slaughter house wastes and other comparable wastes shall not be deposited at a dry disposal site or in a cell within a waste disposal ground, but shall be disposed of in the manner prescribed from time to time by the Minister and approved by the Minister of the Environment.

S.37(1) - A person shall not enter into a contract for transporting for disposal on, from and after the 1st day of January 1973, liquid wastes such as septic tanks, breweries and distilleries unless he is in possession of a valid and subsisting permit authorizing him to do so issued by the Minister for the current year.

Water Resources Management Act

S.27 - ....no person shall discharge, deposit, drain or release any substance capable of changing the quality of water or causing water pollution.

Litter Control Act

S.3(1) - ....no person shall abandon or cause to be abandoned:

(a) upon any land that is owned by another person;

(b) upon any land that is vested in Her Majesty in right of Saskatchewan or reversed or set aside for the use of the public; or

(c) into or upon any water;

any manufactured article, processed material or any waste.

(2) - It shall not be an offence for a person to abandon or cause to be abandoned any manufactured article, processed material or any waste in a recepticle provided for the purpose of receiving the manufactured article, processed material or waste, or on lands provided for the same purpose under the authority of any Act.

Pest Control Products (Saskatchewan) Act

S.6(1)- Every person who keeps, stores or transports a pesticide shall do so in a manner that:

(a) ensures that the pesticide does not come into contact with or contaminate any substance intended for human consumption or for consumption by plants or other animals; and

(b) prevents the pesticide from coming directly or indirectly into contact with human, animal or plant life in any other manner that may be injurious to that life.

S.8 - No person shall:

(a) dispose of any pesticide or mixture containing a pesticide; or

(b) bury, decontaminate, burn or otherwise dispose of any container that has been used to hold a pesticide;

except at a site prescribed in the regulations and in a manner except at a site prescribed in the regulations and in a manner prescribed in the regulations or, in the absence of regulations, in a manner recommended by the manufacturer.

S.9 - No person shall:

(a) cleanse or place in an open body of water any apparatus, equipment or container used in the holding or application of a pesticide; or

(b) cause water from an open body of water to be drawn into any apparatus or equipment used for mixing or applying a pesticide unless the apparatus or equipment is equipped with a device that prevents a return flow of the mixture from the apparatus or equipment.

Air Pollution Control Regulations

S.3(1) - ....no person shall operate an industrial source unless a permit has first been obtained.

(2) - ....no person shall operate an incinerator or fuel burning equipment unless a permit has first been obtained.

(3) - ....a permit is not required for an industrial source where that source is subject to the provisions of:

(a) The Pollution (by Live Stock) Control Act, 1971;

(b) The Oil and Gas Conservation Act, 1969; or

(c) The Pollution Prevention Regulations for the Mineral Industry, 1970.

(4) ....a person is not required to obtain a permit for an existing industrial source, incinerator or fuel-burning equipment until such time as the Minister may, by notice published in the Saskatchewan Gazette, require a permit to be obtained.

(6) - A person operating any of the following sources of air pollution is not required to obtain a permit to do so:

1. Fuel-burning equipment used solely for the purpose of comfort heating.
2. Construction equipment for the construction and maintenance of public roads while the equipment is on the road.
3. Equipment for seeding, harvesting, fertilizing or for pest or weed control on agricultural lands.

S.14 - No person shall operate or permit the operation of any industrial source, incinerator or fuel-burning equipment that results in the discharge of air contaminants, either alone or in combination with the same air contaminant emitted from another industrial source, incinerator or fuel-burning equipment, or any combination thereof, causing a concentration of the air contaminant in the atmosphere greater than the maximum concentration for the air contaminant established in the Table contained in Schedule I to this regulation.

S.15 - ....no person shall cause or permit to be caused, the discharge into the outside atmosphere from any industrial source, incinerator or fuel burning equipment of,

(a) any air contaminant or a combination of air contaminants; or

(b) any odour;

which may cause discomfort to or endanger the health, safety or welfare of persons, cause loss of enjoyment to normal use of property, interfere with normal business or cause damage to property.

S.16 - No person shall cause or permit to be caused by emission or discharge into the atmosphere of hydrogen sulfide gas from any industrial source, incinerator or fuel burning equipment.

S.17(1) - ....no person shall cause or permit to be caused, a discharge into the atmosphere from an industrial source, incinerator or fuel burning equipment, any visible air contaminant which is a shade darker than number 2 on the

Ringelmann Chart or exhibits an opacity greater than 40% opacity. Where the presence of uncombined water is the only reason for failure to meet the requirements of this paragraph, such failure shall not be considered a violation of this section.

(2) - A discharge of less than 5 minutes duration during start up and shutdown of an industrial source, incinerator or fuel-burning equipment is not prohibited by subsection (1).

(3) - ....no person shall cause or permit to be caused, a discharge into the atmosphere of emissions of sufficient quantity as to cause a visibility problem on public roadways or developed property.

S.18(1) - ....no person shall cause or permit to be caused, the burning of trash, garbage, industrial waste or any other material in a manner or in an incinerator other than that approved by the Minister, a provincial officer or these regulations.

The Pest Control Products Regulation

S.9 - ....no person shall:

(1) Dispose of any pesticide or mixture containing a pesticide; or

(2) Bury, decontaminate, burn or otherwise dispose of any container that has been used to hold a pesticide;

except at a site and in a manner as follows:

(a) No person shall deposit pesticides, materials treated with pesticides or receptacles containing pesticides at a dry disposal site or within a cell within a waste disposal ground except as may be prescribed from time to time by the Minister of the Department of Health.

(b) Pesticides, materials treated with pesticides or receptacles containing or having contained pesticides shall be disposed of only on the property of the purchaser of the pesticide except where permission has been granted by a property owner other than a municipal council to allow the disposal to be undertaken on the property owned, in which case the disposal shall be in accordance with instructions provided by the property owner.

(c) Materials, treated with pesticides, receptacles containing or having contained pesticides whether damaged, obsolete, or partially full, shall be kept in storage adequately protected from children or animals or shall be destroyed or decontaminated in accordance with instructions provided by the manufacturer.

Uranium Mining Pollution Control Regulations

S.27 - No operator shall operate or allow to be operated any mine or mill that results in the discharge of air contaminants causing a concentration of the air contaminant in the atmosphere greater than the maximum concentration for the air contaminant as established in Schedule I of the Air Pollution Control Regulations...

Environmental Spill Control Regulations

S.9 - No person shall dispose of any spilled pollutant or of any substance, thing, plant, animal or part of the natural environment that is, or may have been, affected by a spill, other than in a manner approved by the Minister.

Mineral Industry Pollution Prevention Regulations

S.4 - No person shall cause or allow industrial wastes to be discharged unless he obtains a ministerial approval.

S.9(1) - No person shall construct or operate a waste disposal basin except in accordance with generally accepted engineering practice where:

(a) it is located on a site that:

(i) is not controlled by the person who operates it:

(ii) is located in the channel of a permanent watercourse, unless the watercourse is permanently diverted or the Minister has approved the location in writing; or

(iii) does not contain diversion channels for protection against surface water runoff; or

(b) its embarkments do not have adequate strength, stability or permeability characteristics.

S.10 - No person shall operate a mine or plant unless the site on which the mine or plant is located contains a drainage system that can adequately control pollution caused by seepage and surface water runoff from the site.

S.12(2) - No person shall inject liquid industrial wastes into a subsurface horizon unless:

(a) they are injected into permeable sedimentary strata;

(b) they do not cause pollution of the subsurface environment outside of the sedimentary strata or portion of the sedimentary strata intended to receive them; and

(c) he obtains the written approval of the Minister of Mineral Resources.

S.13(1) - No person who owns or operates a mine or plant shall abandon the mine or plant until he has:

(a) provided for the stabilization of industrial wastes contained on the mine or plant site in order to minimize and control pollution caused by the industrial wastes;

(b) reclaimed the area disturbed by the operation of the mine or plant; and

(c) obtained the written approval of the Minister.

Alberta

General

Although there has traditionally been a certain jurisdictional rivalry between the Departments of Health (anxious to retain local autonomy over municipal landfills) and of the Environment (dealing with chemical contaminants and industrial sites), the necessary tests and inspections are nevertheless carried out by each on a regular and independent basis. Several pieces of legislation relating most directly to the environmental side of the equation, particularly in the area of waste management, have recently become law. The Hazardous Chemicals Act and its Amendment contain certain prohibitions that have been included below, and use a simple and uncomplicated definitional approach that avoids entanglement in detailed criteria. A Transportation of Dangerous Goods Control Act (its supporting regulations are still in draft form) and Special Waste Management Corporation Act were similarly enacted in the spring of 1982.

As in most other provinces the control order route is preferred to legal action. If a condition is breached an offence has been committed, the many evidentiary problems that can arise in a judicial setting are thus avoided. A full-time enforcement officer is employed and deals largely with air pollution violations.

It is too early to tell if Alberta's legislation in this area has affected the waste disposal practices of industry. Regulatory development to support existing legislative prohibitions is required. At the present time, because of the lack of alternative sites, all hazardous waste can and does go to landfill sites. There should, however, be a voluntary manifest system in place by the fall of 1982, one which will use (with some exceptions for certain chemicals) the basic list as found in regulations under the federal Transportation of Dangerous Goods Act. This system will gradually tighten until made compulsory.

The selection of a central treatment facility site will be based upon regional and local assessments of appropriate locations made upon invitation from local municipalites. A decision will in this regard be made shortly. The site will be located on government owned land, operated under contract by private industry. The Department is presently reviewing the short list of candidate companies, the main criteria for selection of possible proponents being the protection of human health and the environment and safety and experience in integrated waste management. Bonding will be required. The new Waste Management Corporation will as watchdog be responsible for overall system management, acting as an operator of last resort should the private sector not be able to

provide the necessary services. Changes in the practice of industry should be visible within a year. Although industry has been very cooperative thus far, the proverbial screws have yet to tighten.

The 1980 report of the Environmental Council of Alberta proposed the setting up of an "environmental trust fund". To be initially capitalized by the province, the fund would recover its costs through: i) litigation with those responsible for the event; ii) penalties assessed by the Department of the Environment, if warranted and; iii) through fees and excise taxes levied on products whose manufacture generates substantial quantities of hazardous waste. The idea, however, did not generate sufficient support. Although most feel that existing problems are not serious enough to warrant such a move, a similar intent is to be found in both the Hazardous Chemicals Act and its Amendment in the definition of "person responsible". The Council's suggestion that fund monies be used, in part, as payment to residents for demonstrated property devaluation owing to hazardous waste facilities being located nearby has received some attention in the provincial legislature (a motion from the floor concerned such a compensation scheme), but no government policy or legislation in this area has been forthcoming.

Caselaw: Clean Air Act, S. 4.1.(8)(b)

Clean Air (General) Regulations, S.8(a)

R. V. Great Canadian Oil Sands Ltd.

Unreported, Alta., Prov. Ct., Fort McMurray, Feb. 23, 24 and 25, 1977.

Reported as to charge N°. 1 (1978), 9 A.R. 86 (Alta. D.C.)

Aff'd as to charges 1 and 2 above, Alta. Dist. Ct., Ed., Sept. 28, 1977.

The Company possessed an approval issued by the Energy Resources Conservation Board (acting under Section 43 of the Oil and Gas Conservation Act) that prohibited the flaring of gaseous hydrocarbons without authorization, "except in cases of emergency". It claimed that such action was "prudent" in the present circumstances to protect plant and plant personnel. The Court found that the Board's approval operated "as a complete justification or at least a 'lawful excuse'." This meant that both the Clean Air Act licence and visible emission standards were made subject to the Board's operational approval. The result is inconsistent with the suggestion of previous authorities that statutory approvals be interpreted so that actions which result in environmental damage are likely to be construed as outside the terms of the approval. See Part 2, S. 10(4)(v), Clean Air (Maximum Levels) Regulations.

Evidence based on the company's own monitoring records which showed emissions in excess of the licence limits was held to be admissible and did not violate the company's right against self incrimination. On the charge itself, there was found to be insufficient evidence upon which to base a half hour average. Continuous monitoring equipment in a plant would appear to be necessary to support a charge of this type. Although such equipment is available, it had not been required by the Director of Standards and Approvals as a term of the company's Clean Air Act licence. See S. 8(a), Clean Air (General) Regulations.

The only evidence to support the particulate charge was that the emissions standard in the licence was exceeded at one boiler on two particular days. The boiler was operating in conjunction with other boilers, but there were no stack samples to provide evidence as to particulate levels at the bottom and top of the stack. The charge was dismissed. See S. 4.1(8)(b), Clean Air Act.

The trial judge found that the Fisheries Act charge was not made out since the effluent was not a "deleterious substance" within the meaning of section 33(2). There was in his opinion no evidence that it affected the ecology or fish in the Athabasca River at or near the plant on the particular day. He reached this conclusion while at the same time holding that the river was a water frequented by fish and that the effluent was deleterious to fish that were subject to laboratory tests. The charge was later appealed and dismissed. This view of "deleterious substance" appears inconsistent with previous authorities. See S.33(2), Fisheries Act, in Canada (above).

Alberta	Legislation		Year	Sections
	ACA -	Agricultural Chemicals Act	1970	SS.8,10,11, 12
	PLA -	Public Lands Act	1970	S.51
	WRA -	The Water Resources Act	1970	S.6
	CAA -	Clean Air Act	1971	SS.4,4.1,4.2, 4.3
	CWA -	Clean Water Act	1971	SS.4,4.1,4.2, 4.3,9.1
	OGCR -	Oil and Gas Conservation Regulations (OGCA - Oil and Gas Conservation Act)	1971	SS.2.120, 7.040,8.010, 8.020,8.040
	PBHRC -	Provincial Board of Health Regulations Respecting the Control of Refuse Disposal Systems (PHA - Public Health Act)	1971	S.12.3.1
	WAA -	Wilderness Areas Act	1971	S.8
	LA -	Litter Act	1972	SS.2,3,4,5,6
	CWR -	Clean Water (General) Regulations (CWA)	1973	S.11
	CWMPR -	Clean Water (Municipal Plants) Regulations (CWA)	1973	S.27
	PBHRN -	Provincial Board of Health Regulations Respecting Nuisances and General Sanitation (PHA)	1973	SS.34.3.1, 34.3.2, 34.10.3, 34.13.2
	LCR -	Land Conservation Regulations (LSCRA - Land Surface Conservation and Reclamation Act)	1974	SS.42,43
	CAR -	Clean Air (General) Regulations (CAA)	1975	SS.5,6

Alberta	Legislation	Year	Sections
	RDAR - Restricted Development Area Regulations (DEA - Department of the Environment Act)		
	- Edmonton	1974	S.5
	- Calgary	1976	S.5
	- Capital City Recreation Park	1978	S.5
	- Lethbridge	1979	S.5
	HCA - The Hazardous Chemicals Act	1978	SS.7.2,7.3, 7.4
	PSUHR - Pesticide Sales, Use and Handling Regulations (ACA)	1980	SS.2,25,26

DISCHARGES/EMISSIONS	ALBERTA								
	ACA	PLA	WRA	CAA	CWA	OGCR	PBHRC	WAA	LA
INTO: WATER OR ANY WATERCOURSE	SS. 8,10, 11,12	S.51	S.6		SS.4,4.1, 4.2,4.3, 9.1	S.2.120	S.12.3.1	S.8	S.6
: WELLS	SS. 10,11, 12				S.9.1		S.12.3.1		S.6
: SEWAGE SYSTEMS	SS. 10,11				S.9.1		S.12.3.1		S.6
: THE ATMOSPHERE	SS. 8,10 11			SS.4,4.1, 4.2,4.3		S.7.040	S.12.3.1		S.4
ONTO: ROADWAYS	SS. 10,11				S.9.1		S.12.3.1		SS.2,3, 4,5
ONTO / FROM: A BUILDING, PLANT, FACILITY	SS. 8,10 11,12	S.51	S.6	SS.4,4.1, 4.2, 4.3	SS.4,4.1, 4.2, 4.3 9.1	SS.2.120, 7.040	S.12.3.1	S.8	SS.2,3,4 5
A MINE, QUARRY, PIT, WASTE DISPOSAL OR LANDFILL SITE	SS. 8,10 11,12	S.51	S.6	SS.4,4.1, 4.2, 4.3	SS.4,4.1, 4.2, 4.3, 9.1	S.2.120, 7.040, 8.010,8.020 8.040	S.12.3.1	S.8	SS.2,3, 4,5
STORAGE TANKS, CONTAINERS	SS. 8,10, 11,12	S.51	S.6		S.9.1		S.12.3.1	S.8	SS.2,3,4 5
ONTO / FROM: PRIVATE PROPERTY	SS. 8,10 11,12	S.51	S.6	SS.4,4.1, 4.2, 4.3	SS.4,4.1 4.2, 4.3 9.1	SS.2.120, 7.040, 8.010 8.020 8.040	S.12.3.1	S.8	SS.2,3,4 5

	ALBERTA (CONT.)							
	CWR	CWPR	PBHRN	LCR	CAR	RDAR	HCA	PSUHR
INTO: WATER OR ANY WATERCOURSE	S.11	S. 27	SS.34.3.1 34.3.2 34.13.2				SS. 7.2 7.3 7.4	S.26
: WELLS	S.11	S. 27	SS.34.3.1 34.3.2 34.13.2			S.5	SS. 7.2 7.3 7.4	S.26
: SEWAGE SYSTEMS	S.11	S. 27	SS.34.3.1 34.3.2 34.13.2				SS. 7.2 7.3 7.4	S.26
: THE ATMOSPHERE			SS.34.3.1 34.3.2		SS.5*,6		SS. 7.2 7.3 7.4	S.26
ONTO: ROADWAYS			SS.34.3.1 34.3.2 34.10.3 34.13.2				SS. 7.2 7.3 7.4	S.26
ONTO / FROM: A BUILDING, PLANT, FACILITY	S.11	S. 27	SS.34.3.1 34.3.2 34.10.3 34.13.2		SS.5*,6	S.5	SS. 7.2 7.3 7.4	SS.2,25, 26
A MINE, QUARRY, PIT, WASTE DISPOSAL OR LANDFILL SITE	S.11	S. 27	SS.34.3.1 34.3.2 34.10.3 34.13.2	SS.42,43	SS.5*,6	S.5	SS. 7.2 7.3 7.4	SS.2,25, 26
STORAGE TANKS, CONTAINERS	S.11	S. 27	SS.34.3.1 34.3.2 34.10.3 34.13.2		S.5*	S.5	SS. 7.2 7.3 7.4	SS,2,25, 26
ONTO / FROM: PRIVATE PROPERTY	S.11	S. 27	SS.34.3.1 34.3.2 34.10.3 34.13.2		SS.5*,6	S.5	SS. 7.2 7.3 7.4	SS.2,25, 26

Alberta

Agricultural Chemicals Act

S.8(1) - No person shall apply, deposit, add, emit, discharge or cause or permit the application, deposit, addition, emission or discharge of a pesticide or a substance or thing containing a pesticide.

(a) into, on or over an open body of water, or

(b) within (i) 30 horizontal metres, or

(ii) any other distance prescribed in the regulations, of an open body of water.

(2) - Subsection (1) does not apply to a person who

(a) holds a licence or permit in accordance with the regulations to so act, or

(b) is exempted by the regulations from the requirements to hold a licence or permit.

S.10 - No person shall

(a) dispose of any pesticide or mixture containing a pesticide, or

(b) bury, decontaminate, burn or otherwise dispose of any container that has been used to hold a pesticide,

except at a site or in a manner that is

(c) prescribed by the regulations, or

(d) in the absence of regulations, recommended by the manufacturer of the pesticide or the Minister.

S.11 - Subject to the Clean Air Act and the Clean Water Act, every person who deposits, adds, emits or discharges an agricultural chemical or a substance or thing containing an agricultural chemical on or into the natural environment in a manner not prescribed by the regulations or, if there are no regulations, in a manner not recommended by the manufacturer and thereby

(a) causes or is likely to cause injury or damage to, or impairment of, the quality of the natural environment, or

(b) causes or is likely to cause injury or damage to plant or animal life.

shall forthwith notify the Minister and shall take all measures that the Director by order may prescribe with respect to the cleaning and decontamination of the natural environment or any plant or animal life, substance or

thing that has come into contact with an agricultural chemical by any means other than in accordance with this Act and the regulations or a licence, permit or order under this Act.

S.12 - ....no person may

(a) wash or submerge any apparatus, equipment or container used to hold, mix or apply a pesticide in

(i) an open body of water, or

(ii) a well, cistern, dugout or reservoir controlled by a local authority,

(b) wash or clean an aircraft, watercraft, vehicle, machine, apparatus, equipment or container used to hold, mix or apply a pesticide within 30 horizontal metres of

(i) an open body of water, or

(ii) a well, cistern, dugout or reservoir controlled by a local authority, or

(c) cause water to be drawn from or pumped into an aircraft, watercraft, vehicle, machine, apparatus, equipment or container used to hold, mix or apply a pesticide, from

(i) a reservoir, well, cistern or dugout controlled by a local authority whether the aircraft, watercraft, machine, apparatus, equipment or container is equipped with a device to prevent backflow or not, or

(ii) an open body of water, unless the aircraft, watercraft, vehicle, machine, apparatus, equipment or container is equipped with a device that prevents back flow.

Public Lands Act

S.51(1) - No person shall cause, permit or suffer

(a) the accumulation of waste material, debris, refuse or garbage on public land, or

(b) the existence on public land of any structure or excavation of any kind that is undersirable in the Minister's opinion, or

(c) the existence on public land of any condition which, in the opinion of the Minster, may cause danger by fire to life, property or forest growth, or

(d) the doing of any act on public land that may injuriously affect watershed capacity, or

(e) the disturbance of any public land in any manner that results or in the opinion of the Minister is likely to result, in injury to the bed or shore of any river, stream, watercourse, lake or other body of water or land in the vicinity thereof, or

(f) the creation of any condition on public land which, in the Minister's opinion, is likely to result in soil erosion.

The Water Resources Act

S.6(1) - No person shall

(a) divert or use any water, or

(b) lay, place, build or erect in, over, under, upon or adjacent to any water, any structure, device, contrivance or thing, or any earth, sand, gravel or other material, which interferes with or is capable of interfering with the present or future development, conservation or management of water....

except under the authority of this Act, the regulations or a licence, interim licence or a permit issued under this Act.

Clean Air Act

S.4(1) - ....no person shall commence the construction of

(a) any plant for the maintenance of petroleum products, natural gas products, chemical and allied products, pulp and paper products, stone, clay or glass products, cement and lime products, fertilizers or animal by-products, or

(b) any plant for primary metal production, metal processing, the processing of wood or wood products, the processing of coal, the processing of natural gas or its derivatives, the manufacture of asphalt or ready-mixed concrete, gravel crushing or meat packing, or

(c) any incinerator other than an incinerator for a one-family dwelling, or

(d) any sewage treatment and disposal plant, or

(e) any hay or forage drier, seed cleaning plant or any steam generating plant, or

(f) any thermal electric power generating plant or any steam generating plant, or

(g) any plant, structure, or thing, where the Director of Standards and Approvals has, prior to the commencement of construction, notified that person in writing that the proposed plant, structure or thing will, in the Director of Standards and Approvals opinion, be a source of air pollution and that it is subject to this section, or

(h) any other type of plant, structure or thing specified in the regulations as being subject to this section, or

(i) any alteration or addition to anything mentioned in clauses (a) to (h), unless the Director of Standards and Approvals issues a permit therefor.

S.4.1(1)- No person shall commence the operation or use of a plant, structure or thing to which section 4, subsection (1) applies unless he is the holder of a licence in respect of the plant, structure or thing.

S.4.2(1)- No person shall alter, add to or in any other manner change a plant, structure or thing that is the subject of a permit or licence unless a permit to alter, add to or otherwise change a plant, structure or thing is issued by the Director of Standards and Approvals.

S.4.3- No person shall transfer, sell, lease or otherwise dispose of a permit or licence.

Clean Water Act

S.4(1) - ....no person shall commence the construction of

(a) a waterworks system, or

(b) a waste water treatment facility, or

(c) a sewer or sewage project, or

(d) a swimming pool other than one in or appurtenant to a one-family dwelling, or

(e) any plant for the manufacture of petroleum products, natural gas products, chemical and allied products, pulp and paper products, steel, clay or glass products, cement and lime products, fertilizers or animal by-products, or

(f) any plant for primary metal production, metal processing, the processing of wood or wood products, the processing of natural gas or its derivatives, the manufacture of asphalt or ready-mixed concrete or gravel crushing, or

(g) meat packing, food processing or beverage processing plants, or

(h) any thermal electric power generating plant or any steam generating plant, or

(i) any plant, structure or thing designed for use in preventing or controlling water pollution or regulating water quality, or

(j) any plant, structure or thing where the Director of Standards and Approvals has, prior to the commencement of construction, notified that person in writing that the proposed plant, structure or thing will, in the Director of

Standards and Approvals opinion, be a source of water pollution and that is subject to this section, or

(k) any other type of plant, structure or thing specified in the regulations as being subject to this section, or unless the Director of Standards and Approvals issues a permit thereof.

S.4.1(1) - No person shall commence the operation or use of a water facility unless he is the holder of a licence in respect of the water facility.

S.4.2(1) - No person shall alter, add to or in any other manner change a water facility that is the subject of a permit or licence unless a permit to alter, add to or otherwise change the water facility is issued by the Director of Standards and Approvals.

S.4.3 - No person shall transfer, sell, lease or otherwise dispose of a permit or licence.

S.9.1(1) - ....no person shall deposit or permit the deposit of a deleterious substance of any type in a watercourse or in surface water or in any place under any conditions where the deleterious substance or any other deleterious substance that results from the deposit of the deleterious substance may reenter any watercourse or any surface water.

(2) - Subsection (1) does not apply to the deposit of a deleterious substance of a type, in a quantity and under terms and conditions stated

(a) in an approval or certificate issued by the Provincial Board of Health pursuant to the Public Health Act or regulations thereunder, or

(b) in an approval issued by the Director of Pollution Control pursuant to this Act or the regulations thereunder, or

(c) in a licence issued by the Director of Standards and Approvals pursuant to this Act or regulations thereunder, or

(d) in an approval, permit or licence issued by the Energy Resources Conservation Board, or

(e) in a permit issued pursuant to the Agricultural Chemicals Act.

Oil and Gas Conservation Regulations

S.2.120(1)- No person shall

(a) drill a well or cause or permit a well to be drilled, or

(b) construct a pit for containing mud, oil, water and other fluid associated with the well or cause or permit such a pit to be constructed closer than 300 feet, or such greater distance as the Board may direct, to the normal high water mark of a body of water or permanent stream unless he has obtained written approval from the Board of his plans to prevent pollution of this water.

S.7.040(1) - No person shall burn, and no licensee of a well or operator of a plant or battery shall cause or permit to be burned, any oil, gas, oily waste or other material produced or used at a well or in the operation of a scheme, except under conditions of controlled combustion where there is no significant or visible emission of smoke, unless he has obtained written approval from the Board or its authorized representative.

(2) - Notwithstanding subsection(1), burning of well or plant effluent is permissable under emergency conditions and due to equipment failure, but such burning shall be immediately reported to the Board.

S.8.010 - No oil shall be stored in pits.

S.8.020(1) - No crude bitumen or hydro-carbon derived therefrom shall be stored in a pit without the written approval of the Board.

(2) - Where pit storage is approved under subsection(1), the operator shall not commence or continue to use pit storage until the Board or its authorized representative has approved the pit and any necessary fencing or protective installation.

S.8.040(2) - Not more than one pit shall be used for the disposal or storage of water produced to a battery or produced from a well not connected to a battery.

(4) - Not more than 100 barrels of water produced from a well or to a battery or processing plant may be disposed of or stored in an earthen pit in any month but the Board may prescribe a greater or lesser volume, or may prohibit disposal or storage of water in a pit in any area, having regard to the salinity of the water, the nature of the soil and other circumstances.

Provincial Board of Health Regulations Respecting the Control of Refuse Disposal Systems

S.12.3.1 - .... no person, municipality or corporation shall dispose of waste material in any place other than:

(a) a dry disposal site, modified landfill, sanitary landfill or unclassified waste disposal system established, operated and maintained in accordance with these regulations, or

(b) an incinerator constructed, operated and maintained in accordance with:

(i) the Provincial Board of Health Regulations for the Control of Air Pollution, and

(ii) the Clean Air Act and Regulations made pursuant thereto.

Wilderness Areas Act

S.8(1) - No person shall

(e) deposit any litter, garbage or refuse in a wilderness area except in places provided and designated for that purpose....

Litter Act

S.2 - No person shall dispose of litter on public land unless he disposes of it

(a) in a container placed for the purpose of collecting it, or

(b) in accordance with The Forest and Prairie Protection Act and regulations made thereunder, and the regulations under this Act.

S.3 (1) - No person shall dispose of litter on a highway, unless he disposes of the litter in a container placed for the purpose of collecting it.

(1.1) - No person shall transport litter in or on a motor vehicle or trailer on a highway, if the litter is likely to fall off or blow off the motor vehicle or trailer, unless the litter while being transported is adequately secured to prevent it from falling off, or adequately covered to prevent it from blowing off, the motor vehicle or trailer.

S.4 - No person shall dispose of litter on any land owned by a local authority or owned by the Crown and administered by the Minister of Municipal Affairs, unless he disposes of it

(a) at a sanitary landfill established pursuant to the regulations made under the Public Health Act, or

(b) through a municipal refuse disposal system, or

(c) in a container placed for the purpose of collecting it, or

(d) by burning it

(i) in accordance with a permit, licence or approval issued by a council, or

(ii) pursuant to a permission given under the regulations made under the Clean Air Act, or

(e) in any other manner specified in the regulations under this Act.

S.5 - No person shall dispose of litter on any land other than his own unless the owner or person in control of the other land agrees to its disposal.

S.6(1) - No person shall dispose of litter on, into or under water or ice unless the litter is disposed of

(a) pursuant to an approval or licence issued under The Clean Water Act or regulations made thereunder, or

(b) pursuant to an approval issued under The Public Health Act or regulations made thereunder, or

(c) pursuant to a method or in a manner specified in the regulations under this Act.

Clean Water (General) Regulations

S.11(1) - No person shall, without the written permission of the Director of Standards and Approvals or the Director of Pollution Control, discharge, deposit, drain, release, cause or allow to be deposited upon the banks of or into any reservoir, surface water or watercourse any substance capable of changing the quality of the water or causing water contamination.

Clean Water (Municipal Plants) Regulations

S.27 - No chemical including pesticides, shall be used for the treatment of water, a water reservoir or in and around a water facility unless the Director of Standards and Approvals has approved the use of those chemicals for that water, water reservoir or water facility.

Provincial Board of Health Regulations Respecting Nuisances and General Sanitation

S.34.3.1- No person shall create, commit or maintain any nuisance.

S.34.3.2- ....no person shall create, establish or maintain:

(a) any premises or part thereof so constructed or in such a state as to be or which may become injurious or dangerous to health, or which may hinder in any manner the prevention or suppression of disease;

(b) any street, pool, ditch, gutter, watercourse, sink, cistern, water or earth closet, privy, urinal, cesspool, drain, dung pit or ash pit so foul or in such a state as to be injurious or dangerous to health, or which may hinder in any manner the prevention or suppression of disease;

(c) any well, spring or other water supply, or any ice supply, injurious or dangerous to health, or which may hinder in any manner the prevention or suppression of disease;

(d) any stable or other building on which birds or animals are kept in such a manner or in such numbers as to be injurious or dangerous to health, or which may hinder in any manner the prevention or suppression of disease;

(e) any accumulation or deposit of offensive matter, refuse or manure wherever situated, which is injurious or dangerous to health or which may hinder in any manner the prevention or suppression of disease;

(f) any work, manufactory, trade or business so situated as to be injurious or dangerous to health, or which may hinder in any manner the prevention or suppression of disease;

(g) any school or educational institution or factory, shop or other building which is injurious or dangerous to health of persons employed or being therein, or may hinder in any manner the prevention or suppression of disease due to:

  (i) not being in a clean state, or

  (ii) the presence of noxious vapours or odours arising from any drain, water or earth closet or urinal, or

  (iii) lack of ventilation sufficient to render harmless any gases, vapors, dust or other impurities generated in the premises, or

  (iv) overcrowding.

(h) any chimney emitting smoke or any aerosol in such quantity or in such a manner as to be injurious or dangerous to health or which may hinder in any manner the prevention or suppression of disease.

S.34.10.3- No person shall deposit any garbage or any refuse on or into any highway, municipal road, public street, lane or ditch.

S.34.13.2- No person shall deposit any dead animal, manure, excreta, refuse, garbage, liquid waste or other filth upon, on or into:

(a) any river, stream, lake or other surface water in such a manner that it will or may create a nuisance, or

(b) any land in any city, town, village, new town or hamelet without the written permission of the Local Board of Health, or

(c) any highway, municipal road or street.

Land Conservation Regulations

S.42(1) - No regulated surface operation in respect of which an Approval has been granted, shall, in whole or in part, without the written consent of the appropriate Approving Authority first being obtained,

(a) be sold, or

(b) be leased, or

(c) be operated by any person other than the holder of the Approval.

(2) - A holder of an Approval shall not, without first obtaining the written consent of the Approving Authority, enter into any agreement for a merger or an amalgamation with any other person.

S.43(1) - No transfer of an Approval or of any part thereof, of interest therein or of any benefit thereby conferred is valid without the written consent of the appropriate Approving Authority first being obtained and the Approving Authority may revoke an Approval in respect of which, without consent, there is a purported transfer, wholly or partly, or as to an interest or benefit therein.

Clean Air (General) Regulations

S.5 - The release of toxic air contaminants to the atmosphere is prohibited unless the written approval of the Director of Standards and Approvals has just been obtained.

S.6 - No person shall make an open fire by burning, or use an open fire for burning any prohibited debris anywhere in Alberta unless the written approval of the Director of Standards and Approvals has just been obtained.

Restricted Development Area Regulations - Edmonton

S.5(2) - No person shall, without the written consent of the Minister, commence, continue or recommence any operation or activity that causes, will cause or is likely to cause any surface disturbance of land in the Area or to construct or erect any buildings on any land in the Area, and without limiting the generality of the foregoing, no person shall commence, continue or recommence any operation or activity that is of a kind falling within one of the following descriptions, namely:

(a) the drilling, operation or abandonment of a well;

(b) the construction, operation, or abandonment of a pipeline, battery, transmission line or telecommunications line;

(c) the opening up, operation or abandonment of a mine or quarry;

(d) the opening up, operation or abandonment of a pit or of a waste disposal site or landfill site;

(e) geophysical operations that result or will result in surface disturbances;

(f) the construction, operation or abandonment of a mineral processing plant, road, railway or aircraft landing strip;

(h) the construction, operation or abandonment of a site for subsurface disposal of solid or liquid waste;

(k) the preparation of land to be used for the purpose of residential, commercial or industrial sites or for recreational development;

(n) any alteration or extension of any operation or activity referred to in clauses (a) to (m).

The Hazardous Chemicals Act

7.2 No person shall

(a) generate hazardous waste and permit that waste to leave the premises where it was generated,

(b) collect from the premises referred to in clause (a), or consign or transport, hazardous waste, or

(c) accept for transportation, treatment or disposal, or store or provide storage facilities for, hazardous waste generated by another person,

unless, on application, he or his employer has been allocated a personal identification number by the Director.

7.3 (1) No person shall consign, transport or accept for transportation, storage, treatment or disposal any hazardous waste unless the waste is accompanied by a manifest which

(a) is duly completed in accordance with the regulations,

(b) accurately identifies the quantity, composition and points of origin and destination of the hazardous waste, and

(c) contains the personal identification number of each person consigning, transporting or accepting the waste.

7.4 (1) No person shall

(a) consign or transport hazardous waste to, or

(b) store, treat or dispose of, or accept for storage, treatment or disposal, hazardous waste in,

any place except a facility operating in accordance with the law and with the terms, conditions and requirements of a licence, certificate of variance or approval issued pursuant to the Clean Air Act or Clean Water Act or the regulations under either Act.

Pesticide Sales, Use and Handling Regulations

S.2(2) - No person shall use, apply, handle or transport an agricultural chemical, or operate any machine, equipment or vehicle in connection with the use, application, handling or transportation of an agricultural chemical, in a manner or at a time or place that:

(a) causes or is likely to cause excessive injury or damage to the natural environment;

(b) causes or is likely to cause excessive injury or damage to plant or animal life;

(c) adversely affects or is likely to adversely affect the health or safety of any person; or

(d) renders or is likely to render, directly or indirectly, any property or plant or animal life unfit for use by man.

S.25(1) - No person shall transport

(a) a pesticide,

(b) a material that is mixed or treated with a pesticide, or

(c) a container that contains or used to contain a pesticide

unless the pesticide, material or container is kept

(d) separate from plants and from food for human or animal consumption, and

(e) in a separately packaged vapour proof container in a rigid box or in some other container acceptable to an inspector.

S.26(1) - No person shall dispose of a pesticide, a mixture containing a pesticide, a material treated with a pesticide or a container that has been used to hold a pesticide except

(a) in a sanitary landfill or modified sanitary landfill operated by a local authority, or

(b) in accordance with the recommendations of the manufacturer or the Minister.

(2) - Subsection (1) does not apply to containers of pesticides classified as domestic control products under the Pest Control Products Act (Canada).

Bri tish Columbia

General

A comprehensive new Waste Management Act, incorporating what were formally the Pollution Control and Litter Acts, received royal assent in June of 1982. Certain sections of the Municipal Act (those dealing with the discharge of hazardous wastes into sewer systems) are also to be revised. The only legislative additions planned for the near future are regulations to accompany the new Waste Management Act. The first two sets will probably deal with the implementation of a manifest system (voluntary measures are to be in place by the end of 1982) and "Special Wastes". The Special Waste List (compiled in conjunction with industrial associations) exempts from its number certain substances found in the federal regulations under the Transportation of Dangerous Goods Act that are not generally present in British Columbia. An exemption code has been developed relating to the type and quantity of material disposed of. A small quantity of a very dangerous substance might for example not be considered "special". The use of federal guidelines on treatment technologies and landfill criteria (among other topics) is anticipated as the province prepares itself for the development of this regulatory apparatus.

The process will move rapidly once a proposal from the private sector, one meeting the specific requirements of the Waste Management Act, for a disposal facility is accepted. If the private route is taken, monitoring will be done by the provinces' Waste Management Branch and the Minister. An evaluation committee is currently examining ten serious proposals, and should have a recommendation ready for presentation to the Minister by September of 1982. If no proposal is accepted, a Crown corporation will assume responsibility for and operate the needed facility.

One criticism of the new Act lies in its definition of "storage". It is unclear whether the term includes wastes that are not defined as "special". And although the Act puts an onus on municipalites, especially those in metropolitan areas, to develop their own Waste Management plans (which have a public participation requirement), that same Act does not permit a municipality to veto through the enactment of a bylaw the location of a landfill site that the province feels is deserving of a permit. Few public action initiatives have been pursued. The province has been content to maintain a low profile; an approach very much different than that adopted in neighbouring Alberta.

Caselaw: Pollution Control Act, S.4(1).

R. V. Bordignon Masonry Ltd. (S.4(1)).
(1978), 1 W.W.R. 374(C.A.).

The accused was acquitted of a charge of polluting waters on the grounds that the waters were under federal jurisdiction. On appeal the Court held that the National Harbour's Board Act was enacted for the purpose of management and control of waters in relation to navigation and shipping but had not occupied the field of pollution control.

British Columbia	Legislation		Year	Sections
	SR -	Sanitary Regulations (HA - Health Act)	1917	SS.9,66,68
	RFLO -	Regulation Governing the Manufacture, Sale, Storage, Carriage and Disposal of Flammable Liquids and Oils (FSA - Fire Services Act)	1958	SS.5.02, 5.03
	PCA -	Pesticide Control Act	1977	S.7
	PCR -	Pesticide Control Regulation (PCA)	1978	SS.35,42, 46,47
	LAA -	Land Act	1979	S.62
	MVA -	Motor Vehicle Act	1979	S.205
	WMA -	Waste Management Act	1982	SS.3,4,5,6

DISCHARGES/EMISSIONS	BRITISH COLUMBIA						
	SR	RFLO	PCA	PCR	LAA	MVA	MMA
INTO: WATER OR ANY WATERCOURSE	SS.66*,68		S.7	SS.35,46			SS.3,5,6
: WELLS	SS.66*		S.7	SS.35,46			SS.3,5
: SEWAGE SYSTEMS	SS.66*,68	S.5.02	S.7				SS.3,5
: THE ATMOSPHERE			S.7				S.5
ONTO: ROADWAYS	SS.9,68		S.7	SS.35,42,46		S.205	SS.3,5,6
INTO / FROM: A BUILDING, PLANT, FACILITY	SS.9,66*, 68	S.5.03	S.7	SS.35,46	S.62		SS.3,4,5,6
A MINE, QUARRY, PIT, WASTE DISPOSAL OR LANDFILL SITE	SS.9,66*, 68		S.7	SS.35,46	S.62		SS.3,4,5,6
STORAGE TANKS, CONTAINERS	SS.9,66*	S.5.03	S.7	SS.35,42, 46,47	S.62		SS.3,4,5,6
ONTO / FROM: PRIVATE PROPERTY	SS.9,66*, 68	S.5.03	S.7	SS.35,46,47	S.62		SS.3,4,5,6

British Columbia

Sanitary Regulations

S.9 - No person shall suffer the accumulation upon or escape from his premises, or deposit, or permit the deposit, upon any land belonging to him or under his control, of anything so as to endanger the public health, or shall deposit, or suffer or permit to be deposited in, upon, on, or into any street, square, lane, byway, wharf, dock, slip, lake, pond, bank, harbour, river, stream or water, any manure or other refuse, or vegetable or animal matter, or filth of any kind, or any dead animal.

S.66(1) - No solid refuse or waste matter of any kind shall be deposited in any stream so as to obstruct its flow, or put into any stream or lake so as to pollute its waters, and no solid or liquid sewage matter from either public or private sewers shall be discharged into any stream or lake, but if it can be proved that the best means have been adopted to purify the sewage, etc., before it enters the stream or lake, no offence is committed, that is unless the Local Board has notified the offending parties that the means adopted are insufficient; nor shall any poisonous, noxious or polluting liquid proceeding from any other source be passed into any stream or lake unless the best means have been first adopted to purify the same.

S.68 - No person shall throw, draw off, or allow to run into or upon any public ground, street, or open drain the contents, or any part thereof, of any vault, water-closet, privy, cesspool, or sink, or any filthy matter of any kind.

Regulation Governing the Manufacture, Sale, Storage, Carriage and Disposal of Flammable Liquids and Oils

S.5.02 - No operator shall permit any inflammable liquids or any crank-case oil to flow into a public sewer or into a septic tank or cesspool.

S.5.03 - All waste inflammable liquids or crank-case oil on the premises of a service-station shall be kept in steel drums provided with screw-plugs, which drums shall at all times be kept closed, except when being filled.

Pesticide Control Act

S.7(1) - A person shall not apply, store, transport or have in his possession a pesticide

(a) for a purpose other than that for which it is sold;

(b) in a manner other than that prescribed; or

(c) where the manner of handling the pesticide is not prescribed, in a manner other than that recommended in the instructions that accompany the pesticide, or in a publication, authorized by the Minister, with instructions that have not been superceded.

(2) - A person shall not

(a) dispose of a pesticide other than under the regulations or the Waste Management Act;

(b) wash or submerge in a body of water equipment or a container used to prepare, mix or apply a pesticide; or

(c) draw water into a container used to contain, prepare, mix or apply a pesticide, directly from a body of water or from an irrigation system by means of equipment unless an air gap is maintained between the equipment and the liquid in the container to avoid back siphonage and the equipment meets prescribed conditions.

Pesticide Control Regulation

S.35 - No person shall handle or store a pesticide in such a manner that the pesticide is likely to accidentally come into contact with food or drink intended for human or animal consumption or is likely to contaminate an area of land or body of water or create an unreasonable adverse effect to man or the environment.

S.42 - No person shall transport or cause or permit the transport of a pesticide unless the pesticide is secured in a manner sufficient to prevent the escape or discharge of the pesticide from the vehicle.

S.46.(1)- No person shall

(a) dispose of a pesticide or mixture containing a pesticide; or

(b) bury, decontaminate, or otherwise dispose of a container that has been used to hold a pesticide, other than in accordance with the manufacturer's instructions accompanying the pesticide and in a manner that will not result in an unreasonable adverse effect to man or the environment.

(2)- Where the manner of disposing of the pesticide or container is not provided in the manufacturer's instructions accompanying the pesticide, the pesticide shall be disposed of in a manner authorized by the administrator.

S.47 - No person shall use a faulty or unsafe apparatus for the application of a pesticide where the condition of the apparatus is such that its use may result in an unreasonable adverse effect to man or the environment.

Land Act

S.62(1) - A person shall not throw, deposit, dump, or in any way cause to be placed on Crown land any glass, metal, garbage, soil or other substance without the authority of the Minister.

Motor Vehicle Act

S.205(1)- A person shall not throw, deposit, drop or leave on a highway a glass bottle, glass, nail, tack, wire, can or other thing or substance likely to injure a person, animal or vehicle on the highway.

(2)- A person shall not place, deposit or dump, or cause to be placed, deposited or dumped, garbage, swill, cans, bottles, papers, ashes, refuse, the carcass of a dead animal, offal, trash, rubbish or a noisome, nauseous or offensive matter in or on a highway, including a portion of the right of way of it.

(3)- A person shall not place, deposit or dump, or cause to be placed, deposited or dumped, rocks or dirt in or on a highway including a portion of the right of way of it, without the consent of the party with jurisdiction over the highway at issue, which may be either the Minister of Transportation and Highways or the council of a municipality, or a person authorized by one of them to exercise the jurisdiction.

Waste Management Act

S.3(1) - ...no person shall introduce or cause or allow to be introduced into the environment waste produced by the conduct of

(a) an industry, trade or business, or

(b) any prescribed activity or operation carried on by any prescribed class of persons, and, for the purposes of this subsection, a municipality that stores, treats, handles, transports, discharges or otherwise disposes of waste, is deemed to conduct an industry, trade or business.

(2) - ...no person shall introduce waste into the environment in such a manner or quantity as to cause pollution.

S.4(1) - No person shall store more than a prescribed amount of special waste except in accordance with

(a) an approval, order or permit that requires or authorizes him to store that kind of special waste,

(b) a waste management plan approved under Part 3, or

(c) the regulations.

S.5(1) - A person who produces or stores a special waste shall

(a) not cause or allow more than a prescribed amount of the special waste to be transported from the property where he produces or stores it unless he first

(i) completes in the form and manner prescribed the part of a manifest that applies to him, and

(ii) files the manifest in the manner prescribed

(b) ensure that the person transporting more than the prescribed amount of the special waste from the place where it is produced or stored has a licence for that purpose, where a licence is required by the regulations, and

(c) not cause or allow more than the prescribed amount of the special waste to be transported to a place unless

(i) a permit, order, approval or regulation permits or requires it to be stored or introduced into the environment at that place, or

(ii) storage of the special waste at that place is permitted by the operation of section 4.

(2) - No person shall transport more than a prescribed amount of a special waste unless he

(a) carries with him

(i) a manifest completed as required by subsection (1) and this subsection, and

(ii) where required by the regulations, a licence, and

(b) has completed, in accordance with the regulations, that part of the manifest that applies to him.

(3) - No person shall accept delivery of more than a prescribed amount of a special waste unless he

(a) receives from the transporter a manifest that has been completed as required by subsections (1) and (2),

(b) completes the part of the manifest that applies to him and files the manifest in the form and manner prescribed, and

(c) has a permit or approval to store or introduce into the environment that kind and amount of special waste, or is allowed to store the special waste by the operation of section 4, or the storage or introduction is authorized by the regulations.

S.6(2) - No person shall throw down, drop or otherwise deposit, and leave, in a public place anything in such circumstances as to cause or contribute to the defacement of that place by litter.